APPENDIX

Supreme Court, U. S.
FILED
JAN 23 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-252

LARRY MEACHUM, ET AL.,
PETITIONERS,

v.

ARTHUR FANO, ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED 8/16/75
CERTIORARI GRANTED 12/8/75

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 5059-S

ARTHUR FANO, RICHARD DEBROSKY, ERNEST DIETRICH, ROBERT O'NEAL, ROBERT DUSSAULT, DAVID HATHAWAY, ROBERT HERES, LAWRENCE MULCAHEY, EDWARD SWAYLES, ARTHUR KEAGNEY, JOHN CAMPBELL, DANIEL FERRIERA, STEPHEN GORDON, DANIEL WOODS, RICHARD MCPHERSON, CHARLES ROYCE and JASPER DURANT,

PLAINTIFFS,

v.

LARRY MEACHUM, Superintendent, M. C. I., Norfolk, Individually and in his official capacity,

DEFENDANT.

DOCKET ENTRIES

1974

Nov. 4 Complaint and motion for Temporary Restraining Order received for filing. Motions to proceed in forma pauperis, filed.

4 SKINNER, J. Motion for TRO, DENIED. Motions to proceed in forma pauperis ALLOWED.

5 Summons issued.

Dec. 12 Amended complaint and request for Temporary Restraining Order, filed.

13 SKINNER, J. Counsel appears before Court for hearing on pltfs' request for TRO and preliminary injunction; continued to Dec. 20, 1974 at 2:00 PM.

13 Summons issued on amended complaint.

19 Motion for writ of habeas corpus ad testificandum, filed.

19 SKINNER, J. Motion for writ of habeas corpus, ALLOWED. Writ issued.

1974

20 SKINNER, J. Hearing on pltfs' request for TRO and preliminary injunction; stipulation of facts, filed; defts' motion for in camera inspection of evidence and for the issuance of a protective order relating to such evidence, filed; testimony; evidence; taken under advisement.

1975

Jan. 7 Answer of deft. Meachum, filed.

10 SKINNER, J. Opinion and Order, entered. Copies to counsel and Mass. Lawyers Weekly.

16 Deft's Notice of Appeal filed. c/s
Deft's motion for stay pending appeal filed.

17 SKINNER, J. Hearing on defts' motion for stay of order pending appeal; arguments by counsel; court orders paragraph 1 stayed until Jan. 21, paragraph 2 is stayed pending appeal.

17 SKINNER, J. Statement of reasons for denying stay, entered.

17 SKINNER, J. On motion for stay—allowed as to paragraph 2 of the Order dated 1/10/75 Paragraph 1 of said Order is stayed until January 21, 1975. Otherwise denied.

21 Order of Court received from the Court of Appeals entered . . . It is ordered that the order of the District Court of 1/10/75 be and the same hereby is stayed until further order of this Court. (original pleadings in the Ct. of Appeals)

23 Memorandum and Order on appellants' motion for stay pending appeal entered . . . granted until further order of court.

24 Certified copy of docket entries and original pleadings delivered to the Court of Appeals.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Case No. 75-1033
Transferred from M 75-8006

ARTHUR FANO ET AL.,
v.
LARRY MEACHUM, Superintendent etc.

GENERAL DOCKET

1975

Jan. 27 Record on appeal in one volume filed and case docketed.

31 Appearances of Francis X. Bellotti and Michael C. Donahue for appellant filed.

Feb. 13 Appendix to briefs and brief for appellants filed.

14 Supplemental certificate to record on appeal consisting of certain exhibits and other documents received and filed.

24 Assigned for hearing at the March, 1975 session.

28 Brief for appellees, filed.

Mar. 4 Motion filed. Order (Coffin, Ch.J.) allowing motion of the parties to supplement record and appendix. Notices mailed.
Summary of Plaintiff, Hathaway's testimony filed.
Appearance of Richard Shapiro filed for appellees.
Heard by Coffin, McEntee & Campbell, JJ.

7 Motion filed. Order (Campbell, J.) granting leave to appellees to file post argument supplemental brief. Notices mailed.

7 Post argument supplemental brief filed.

13 Motion filed. Order (Coffin, Ch.J.) is granting leave to appellants to file a memorandum in reply

1975

to appellees' post argument supplemental brief. Notices mailed.

June 27 Judgment: The order of the District Court is affirmed. Opinion by Coffin, Ch.J.
Dissenting opinion by Campbell, J. Notices mailed.

July 3 Motion filed. Order (Coffin, Ch.J.) staying mandate to August 15, 1975. Notices mailed.

16 Motion to vacate stay of mandate filed.

17 Opposition to vacate stay of mandate filed.

23 Order (Coffin, Ch.J., McEntee & Campbell, JJ.) denying motion to vacate stay of mandate. Notices mailed.

Aug. 21 Copy of certificate evidencing docketing in the Supreme Court (No. 75-252) [8/16/75] filed.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title omitted in printing]

VERIFIED COMPLAINT

NATURE OF ACTION AND JURISDICTION

1. Plaintiffs bring this action pursuant to Title 42 U.S.C. §1983 for declaratory, injunctive and compensatory relief against defendant who, acting under color of state law, is punishing plaintiffs in violation to their constitutional civil rights of due process of law.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C. §§ 1343, 2201 and 2202 and Title 42 U.S.C. §1983.

PARTIES

3. Plaintiffs are all residents of M.C.I., Norfolk (hereinafter Norfolk), serving sentences imposed by the Courts of Massachusetts. All are now confined in the Receiving Building (hereinafter R.B.).

3. Defendant LARRY MEACHUM is the Superintendent of Norfolk. As such, he has full authority over all disciplinary and security measures taken at the institution. He is sued individually and in his official capacity.

STATEMENT OF CLAIMS

4. Plaintiffs ARTHUR FANO, ROBERT O'NEAL, RICHARD DEBROSKY, and ROBERT DUSSAULT were taken from general population on October 24, 1974. They were placed in lock-up status in R.B. On October 25, each was given a disciplinary report. The reports were identical and said that on the basis of a "reliable source" it was determined that he "possessed certain instruments that might be used as weapons, and further that he had joined in plans to use these items of contraband." (See attached exhibits Nos. 1, 2, and 3.)

5. Plaintiffs DAVID HATHAWAY, EDWARD SWAYLES, LAWRENCE MULCAHEY, ARTHUR KEAGNEY, ERNEST DIETRICH, DANIEL FERRIERA, JOHN CAMPBELL, STEPHEN GORDON, DANIEL WOODS and ROBERT HERES were taken from general population on October 24, and placed in lock-up status in R.B. On October 25, each received disciplinary report stating that "through reliable sources" it had been determined that he "has been significantly involved in the planning and execution of one or more" of the fires which had struck Norfolk. (See attached Exhibits Nos. 4 and 5.)

6. Plaintiff RICHARD MCPHERSON was taken from general population on or about October 16, 1974, and taken to R.B. He received no notice of why he was being segregated until October 25, when he received a disciplinary report similar to the ones described in paragraph 5.

7. Plaintiff CHARLES ROYCE was taken from general population to R.B. on October 24. On October 25, he was given a disciplinary report which alleged that "it has been determined through a very reliable source that Charles Royce was involved in the trafficing [sic] of Contraband

in the institution." The charge was titled "Passing or receiving Contraband from other inmates or visitors" and "Possession of Narcotics, barbiturates and/or amphetamines." (See attached Exhibit No. 6).

8. On October 25, 1974, plaintiff JASPER DURANT was charged with "disobeying an order" and "causing a disturbance." He was convicted and sentenced to two days in segregation. When he completed his two days, he was taken to R.B. where the other plaintiffs in this suit were being held. He has never received any notification of why he is not being permitted to return to general population.

9. In addition to the above charges, ARTHUR FANO was charged with using "threatening language toward other inmates."

10. In addition to the above charges, plaintiff JOHN CAMPBELL was charged with flooding his cell, and pleaded guilty, but no punishment was being imposed.

11. On information and belief, Defendant LARRY MEACHUM personally signed all the disciplinary reports referred to in paragraphs 5 through 9.

12. On October 25, plaintiffs' attorneys spoke with defendant MEACHUM. At that time he assured plaintiffs' attorneys that by the end of that day the men in R.B. would be given disciplinary reports or be released from R.B.

13. On October 30, plaintiffs' attorneys spoke with defendant MEACHUM's agents, Susan Richmond and Deputy Superintendent Murphy. Plaintiffs' attorneys were then told that none of the men held in R.B. would be given any hearing until the District Attorney had acted, no matter how long that would be.

14. Plaintiffs claim that they are innocent of any wrongdoing. They are being punished without due process of law:

a. They have not been informed of the charges against them, in that the allegations of the disciplinary reports are so vague as to be meaningless. For example, plaintiff FANO is permitted to have a leather shop in the institution in which he must use and possess scissors, razors, knives, hammers, etc., yet he is charged with violating institution rules by having "instruments that might be used as weapons."

b. They have not been informed of the evidence against them in that in every case there is only reference to an anonymous informant.

c. They have not been afforded an opportunity to present their side of the story, in that the disciplinary slips leave blank the section setting a date for a hearing and the defendant has informed them, through counsel, that they will not receive a hearing.

15. Defendant MEACHUM's action in keeping plaintiffs in R.B. is punishment in that it works a grievous loss upon them.

a. They are locked in their cells 23 hours a day, although in general population inmates are never locked in their cells;

b. They are not permitted to have their personal property, including radios or televisions, that they could have in general population.

c. The only facility for washing clothes is the cold-water sink in their cell, unlike the laundry service they could use from general population.

d. They are allowed to exercise only for one hour every other day and even this time is restricted to a roof-top cage.

e. They are totally segregated from the rest of the prison population.

f. They are not permitted to take part in prison programs for their rehabilitation, including school and work. They are denied the wages they could earn were they allowed to work.

g. They are not allowed to go to the canteen.

h. They are not permitted to make phone calls, even to their lawyers, thus reducing still further their contact with the rest of the world and interfering with their right to counsel. This latter is particularly important in light of the fact that the defendant has accused them of criminal acts and referred their cases to the district attorney.

i. They are being deprived of an opportunity to prepare their defense to the criminal charges preferred by defendant MEACHUM, in that they cannot identify and speak to potential witnesses, and gather documentary evidence.

j. They are not allowed to go to messhall for meals, but must eat in their cells.

k. they are only given one bedsheet and no pillow case.

WHEREFORE, PLAINTIFFS pray this Court:

1. Adjudge and declare that defendant's action in punishing plaintiffs without due process of law violated their rights under the Sixth and Fourteenth Amendment of the United States Constitution;

2. Issue a temporary restraining order ordering defendant to release plaintiffs to general population immediately;

3. Issue a preliminary injunction ordering defendant to release plaintiffs to general population immediately;

4. Issue a permanent injunction ordering defendant to release plaintiffs to general population immediately;

5. Issue a permanent injunction ordering defendant to expunge from the records of plaintiffs all reference to the disciplinary reports referred to in paragraphs 5 through 9;

6. Award each plaintiff judgment for $300.00 in compensatory damages;

7. Award each plaintiff judgment for $10,000. for punitive damages;

8. Grant plaintiffs costs and attorneys fees;

9. Order such other and further relief as this Court deems appropriate.

Dated: November 4, 1974

(s) ROBERT STOLZBERG
ROBERT STOLZBERG
LINDA OLMSTEAD
Attorneys for Plaintiffs
Roxbury Defenders Committee
126 Warren Street
Roxbury, Massachusetts 02119
Tel: (617) 445-5640

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK, SS:

The undersigned, attorneys admitted to practice in the courts of Massachusetts, show: that deponents are attorneys of record for plaintiffs in the within action; that deponents have read the foregoing complaint and know the contents thereof; that the same is true to deponents' own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further states that the reason this verification is made by deponent and not by the plaintiff is due to plaintiffs' incarceration at M.C.I., Norfolk.

The grounds of deponents' belief as to all matters not stated upon deponents' knowledge are as follows: personal interviews with plaintiffs and defendants.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: November 4, 1974
Roxbury, Massachusetts

(s) ROBERT STOLZBERG
ROBERT STOLZBERG
(s) LINDA OLMSTEAD
LINDA OLMSTEAD

EXHIBIT 1

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: 10-25-74 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Arthur Fano
No. N21031 Report No. 74-366

Offense: Using threatening or any other improper language toward any other inmate.
Passing or receiving contraband from other inmates.

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI Norfolk which posed a significant threat to person, property and security, it has been determined through a reliable source that Arthur Fano used threatening language toward other inmates, and that he possessed certain instruments that might be used as weapons, and further that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 2

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Richard Debrosky

Offense: (10) Making or having in your Possession any type of dangerous weapon
No. N-19566 Report No. 74-372

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI—Norfolk which posed a significant threat to person, property and security, it has been determined through a very reliable source that Richard Debrosky was in possession of instruments or materials that might be used as weapons and ammunition and further, that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 3

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Robert Dussault
No. N-20427 Report No. 74-368

Offense: (10) Making or having in your possession any type of dangerous weapon

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI—Norfolk which posed a significant threat to person, property and security, it has been determined through a very reliable source that Robert Dussault was in possession of instruments or materials that might be used as weapons and ammunition and further, that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 4

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: David Hathaway
No. N-20664 Report No. 74-374

Offense: (7) Willfully disfiguring or damaging any part of the institution

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of serious fires within MCI Norfolk which caused considerable property damage, and posed a very real threat to personal safety, it has been determined through reliable sources that David Hathaway has been significantly involved in the planning and execution of one or more of these fires.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 5

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: 10/25/74 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Stephen Gordon
No. N21899 Report No. 74-371

Offense: 7 — Wilfully disfiguring or damaging any part of the institution.

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of serious fires within MCI Norfolk which caused considerable property damage, and posed a very real threat to personal safety, it has been determined through reliable sources, that Stephen Gordon has been significantly involved in the planning and execution of one or more of these fires.

My personal comments
Larry Meachum has his Mama working the Block

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 6

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Charles Royce
No. N-21546 Report No. 74-370

Offense: (16) Passing or Receiving Contraband from other inmates or visitors
(26) Possession of Narcotics, barbiturates and/or amphetamines

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI—Norfolk which posed a significant threat to person, property, and security, it has been determined through a very reliable source that Charles Royce was involved in the trafficing of Contraband in the institution.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[TITLE OMITTED IN PRINTING]

AMENDED VERIFIED COMPLAINT

I. INTRODUCTION

This is a Civil Rights class action for declaratory, injunctive, and compensatory relief pursuant to 42 U.S.C. Sec. 1983. Defendants, who are officials of the Department of Correction, acting under color of state law, have deprived Plaintiffs, who are prison inmates presently confined in the correctional institutions of the Commonwealth, of their right to due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States in that: 1) Defendants have caused Plaintiffs to be transferred from general population at M.C.I. Norfolk to segregation cells for disciplinary reasons without affording Plaintiffs a constitutionally mandated disciplinary hearing; 2) Defendants have ordered Plaintiffs to be transferred from M.C.I. Norfolk to other prisons, causing Plaintiffs a grievous loss, after hearings which did not comport with due process.

II. JURISDICTION

2. This action arises under 42 U.S.C. § 1983, and 28 U.S.C. §2201, and jurisdiction is conferred on this Court by 28 U.S.C. §1343.

III. PARTIES

3. Plaintiffs ARTHUR FANO, RICHARD DE BROSKY, ROBERT DUSSAULT, DAVID HATHAWAY, RICHARD MCPHERSON and CHARLES ROYCE are all inmates of Massachusetts Correctional Institutions, serving sentences imposed by the Courts of Massachusetts.

4. Defendant LARRY MEACHUM is the Superintendent of M.C.I. Norfolk and, as such, is responsible under state law

for the overall supervision, management, and control of M.C.I. Norfolk, including the immediate responsibility for the discipline and classification of inmates confined therein. He is being sued in his individual and official capacities.

5. Defendant FRANK HALL is the Commissioner of Correction for the Commonwealth of Massachusetts and, as such, is responsible under state law for the policies and procedures for determining and reviewing the classification status of Plaintiffs, and is also ultimately responsible for developing and implementing classification, as well as disciplinary, policies and procedures. He is being sued in his individual and official capacities.

6. Defendant WILLIAM DAWBER is Acting Deputy Commissioner for Classification and Treatment and, as such, is responsible for formulating and supervising the policies and procedures for classification and is authorized to act on all institutional classification recommendations. Defendant DAWBER is being sued in his individual and official capacities.

IV. CLASS ACTION ALLEGATIONS

7. Plaintiffs bring this class action pursuant to Rule 23(a), and 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure.

8. The class consists of inmates of Massachusetts Correctional Institutions who are presently, or may be subject to disciplinary or administrative determinations which result in the imposition of punitive sanctions or the transfer to more restrictive terms and conditions of confinement.

9. The class has at least 2,700 members, and is so numerous that joinder of each member is impractical. The questions of law raised in this action, including but not limited to the constitutionality of the use of informant information as the basis for the imposition of administrative or disciplinary sanctions without providing the procedural requisites of the due process clause, are common

to all members of the class. The claims of the named Plaintiffs are typical of the claims of the class. The named Plaintiffs have a strong, personal interest in the outcome of the litigation, and will fairly and adequately represent the class, since their attorneys are active and experienced in federal prisoners' rights litigation. In any event, most members of the class are indigent and are not able to secure individual representation.

10. Individual members of the class can be easily identified and notified of this action making management of the case relatively simple. Since there is no conflict among the members of the class, there is no need for individual class members to control the action. Since this Court has jurisdiction over the claims of all class members against all Defendants, and has the power to grant relief that fully protects the rights of all parties, a class action is preferable to a multiplicity of individual suits.

V. Claims For Relief

First Count

11. Plaintiff Richard Mc Pherson was taken from M.C.I. Norfolk general population on or about October 16, 1974, and placed in segregation in the Receiving Building at M.C.I. Norfolk (hereinafter the R.B.). He was not told why he was placed in segregation, nor was he provided with any notice or hearing prior to his placement therein.

12. Plaintiffs Arthur Fano, Richard De Brosky, Robert Dussault, David Hathaway and Charles Royce were taken from general population at M.C.I. Norfolk on October 24, 1974, and placed in segregation in the R. B. They were not provided with any prior written notice of the reason for their placement in segregation nor with any hearing prior to their placement therein.

13. On October 25, 1974, the Plaintiffs' attorneys spoke with Defendant Meachum. At that time he assured Plaintiffs' attorneys that by the end of that day the men in

the R.B. would be given disciplinary reports or be released from the R.B.

14. On October 25, 1974, Plaintiffs were given disciplinary reports. Each was signed by Defendant Meachum:

a) Plaintiff Fano's report stated that:
   After a series of problems within MCI Norfolk which posed a significant threat to person, property and security, it has been determined through a reliable source that Arthur Fano used threatening language toward other inmates, and that he possessed certain instruments that might be used as weapons, and further that he had joined in plans to use these items of contraband.

b) Plaintiff De Brosky's report stated that:
   After a series of problems within MCI Norfolk which posed a significant threat to person, property and security, it has been determined through a very reliable source that Richard Dubrowsky (sic) De Brosky was in possession of instruments or materials that might be used as weapons and ammunition and further, that he had joined in plans to use these items of contraband.

c) Plaintiff Dussault's report stated that:
   After a series of problems within MCI Norfolk which posed a significant threat to person, property and security, it has been determined through a very reliable source that Robert Dussault was in possession of instruments or materials that might be used as weapons and ammunition and further, that he had joined in plans to use these items of contraband.

d) Plaintiff Hathaway's report stated that:
   After a series of serious fires within MCI Norfolk which caused considerable property damage, and posed a very real threat to personal safety, it has

been determined through reliable sources that David Hathaway has been significantly involved in the planning and execution of one or more of these fires.

e) Plaintiff Royce's report stated:

Offense:

(16) Passing or Receiving Contraband from other inmates or visitors.

(26) Possession of Narcotics, barbiturates and/or amphetamines.

• • •

After a series of problems within MCI Norfolk which posed a significant threat to person, property, and security, it has been determined through a very reliable source that Charles Royce was involved in the trafficking of Contraband in the institution.

f) Plaintiff Mc Pherson's report stated that:

After a series of serious fires within MCI Norfolk which caused considerable property damage, and posed a very real threat to personal safety, it has been determined through reliable sources that Richard Mc Pherson has been significantly involved in the planning and execution of one or more of these fires.

(See Exhibits Nos. 1, 2, 3, 4, and 6, copies attached hereto.)

15. Each of the above cases was referred to the District Attorney's office for investigation and prosecution pursuant to M.G.L. ch. 127 §38C.

16. On October 30, 1974, Plaintiffs' attorneys spoke with Defendant Meachum's agents, Susan Richmond and Deputy Superintendent John Murphy and requested, on Plaintiffs' behalf, that a Disciplinary Board hold a hearing to determine Plaintiffs' custody status pending the District Attorney's action on the referred charges as is required by Commissioner's Bulletin 72-1, § VII-D. Plaintiffs' attorneys were then told that none of the men held

in R.B. would be given any hearing until the District Attorney had acted, no matter how long that might be.

17. Plaintiffs' counsel was informed by Lieutenant Joyce of the District Attorney's Office on Monday, November 25, 1974, that there was insufficient evidence to support an indictment on the charges referred to in ¶14, and that the cases would be returned to M.C.I. Norfolk for institutional disciplinary action.

18. No disciplinary hearing pursuant to Commissioner's Bulletin 72-1 was ever held on the charges referred to in ¶14.

19. Being placed in segregation rather than general population at M.C.I. Norfolk inflicts a grievous loss upon Plaintiffs and is, therefore the constitutional equivalent of punishment:

a) Plaintiffs are locked in their cells 23 hours a day, although in general population inmates are never locked in their cells.

b) Plaintiffs are not permitted to have their personal property, including radios or televisions, that they could have in general population.

c) The only facility for washing clothes in the R.B. is the cold-water sink in each Plaintiff's cell, unlike the laundry service they could use in general population.

d) Plaintiffs are allowed to exercise only for one hour every other day and even this time is restricted to a roof-top cage. In general population, there are baseball, football, basketball, handball and other recreational facilities, and depending upon his schedule an inmate can spend eight or more hours per day using these facilities.

e) Plaintiffs are totally segregated from the rest of the prison population.

f) Plaintiffs are not permitted to take part in prison

programs for their rehabilitation, including school and work programs, unlike inmates in general population. They are denied the wages they could earn were they allowed to work.

g) Plaintiffs are not allowed to go to the canteen as are members of general population.

h) Plaintiffs are not allowed to go to the mess hall for meals as they are in general population but must eat in their cells, where the food is frequently cold.

20. On November 4, 1974, Plaintiffs filed the original complaint in this case, asking for a Temporary Restraining Order and other relief. Plaintiffs notified Defendant MEACHUM's counsel, Robert Bell, Esq., Chief Counsel for the Department of Correction, of the action.

21. On the evening of November 4, 1974, Plaintiffs were served with notice that they would receive classification hearings before a Department Review Board pursuant to Department Order 4400.1, to determine Plaintiffs' custody status and possible transfer. These notices repeated the allegations of the disciplinary reports referred to in ¶14, and further stated that Defendant MEACHUM had decided that Plaintiffs' confinement in segregation awaiting action of this board was necessary pursuant to D.O. 4400.1 ¶6.4b. (See attached Exhibits Nos. 7 and 8.) This decision to confine Plaintiffs in segregation for periods up to three weeks was made without any hearing.

22. On November 6, 8, 11, 13, and 14, Plaintiffs' classification hearings were held. At each hearing the procedure was basically the same. Each Plaintiff was allowed to tape record the hearing, provided that the Department of Correction maintained control of the tapes afterwards.

23. The Board opened each hearing by reading a prepared statement. It then ordered the Plaintiff, and his representative to leave the room, while on information and

belief it took secret, unsworn, and hearsay testimony from Defendant MEACHUM. In each case the Board:

a) Refused to call and question the informant, and relied instead upon the hearsay testimony of Defendant MEACHUM.

b) Refused to tape-record Defendant MEACHUM's testimony, even after Plaintiffs agreed that they would not have access to that part of the tape, but merely wanted to preserve a record for a possible review of the proceedings.

c. On information and belief, Defendant MEACHUM's testimony was not taken under oath.

24. After Defendant MEACHUM had completed his testimony and left, each Plaintiff was brought back into the hearing. In at least one case, that of Plaintiff DUSSAULT, the Board admitted that it had determined that the anonymous informant was reliable before hearing anything from Plaintiff.

25. The Board refused to tell Plaintiffs anything at all regarding the testimony of Defendant MEACHUM.

26. The Board then heard evidence from each Plaintiff's social workers, and any witnesses he could produce. The Board refused to compel any guards to come and testify in behalf of Plaintiffs as they had requested.

27. The evidence presented at the hearing about each Plaintiff was highly favorable:

a) DAVID HATHAWAY: He has had no disciplinary reports according to institutional records and had extensive and successful involvement in rehabilitative prison programs. He testified that he had built up a large prison avocation business which was extensively damaged in the very fires which he was accused of planning and executing. His social worker testified that Plaintiff HATHAWAY, in his role as unit representative, had been instrumental in keeping tensions

under control at the institution and in preventing disturbances.

b) ARTHUR FANO: He has had only one, minor disciplinary report according to institutional records. He presented a witness, Mr. William Leonard of the Recreation Department, who testified that he had always worked hard and been very fair in their dealings, which were extensive, and that Plaintiff FANO had never caused any trouble. Plaintiff FANO testified that his avocation is a leather shop, for which he is permitted to have scissors, knives, and other tools.

c) ROBERT DUSSAULT: According to institutional records he had no disciplinary reports at M.C.I. Norfolk. He presented a letter from his institutional supervisor, Mr. Charles Ristaino, which stated that he was an excellent worker and had never created any trouble. Plaintiff DUSSAULT testified that as an institutional plumber, he must use various tools that could be considered potential weapons.

d) RICHARD DE BROSKY: According to institutional records he had no disciplinary record and has successfully completed ten furloughs. He had a very good work record at the institution.

e) RICHARD MC PHERSON: The board's records indicated that he had taken part in a classification hearing only one month earlier, at which hearing the Classification Board made a specific finding that he should be at M.C.I. Norfolk. That Board said that he should get involved in counselling and education programs, and Plaintiff MC PHERSON testified that he had done so. He has had a perfect disciplinary record since his transfer to M.C.I. Norfolk according to institutional records.

f) CHARLES ROYCE: According to institutional records he has had only one disciplinary report while at

M.C.I. Norfolk. He presented a witness, his supervising correctional officer, Thomas Dresner, who testified that he had been an exceptionally excellent worker in the visiting room at M.C.I. Norfolk, doing much to improve conditions for prisoners and their visitors. His social worker, Jack Jackson, testified concerning Plaintiff ROYCE's involvement in counseling and the significant strides he had been making due to his close therapeutic relationship with his counselor, Miss Louchstein.

28. Each Plaintiff denies, and denied to the Board any activity alleged in the disciplinary charges and in the notice of the classification hearing.

29. At the conclusion of each hearing, the Board announced its recommendations:

a) DAVID HATHAWAY was to be transferred to M.C.I. Bridgewater.

b) ARTHUR FANO was to be transferred to M.C.I. Walpole.

c) ROBERT DUSSAULT was to be transferred to M.C.I. Bridgewater.

d) RICHARD DE BROSKY was to be transferred to M.C.I. Bridgewater.

e) RICHARD MC PHERSON was to be transferred to M.C.I. Walpole.

f) CHARLES ROYCE was to be held in administrative segregation for 30 days and be given a second classification hearing at the end of 30 days.

30. Plaintiffs were not given a written statement of the reasons for the board's action, nor of the evidence relied upon.

31. Despite their request, Plaintiffs were not allowed to see the report of the Board to Defendant HALL recommending their transfer, nor were they informed of its contents.

32. Each Plaintiff except ROYCE appealed to the Com-

missioner to review the Board's determination and to order that he be placed in general population at M.C.I. Norfolk. (See Exhibits Nos. 9-12, attached hereto.) On information and belief, this review was personally made by Defendants HALL and DAWBER. They did not make an independent investigation but relied wholly upon the record made in the Classification Board hearing. They based their decision solely upon the information presented therein. Each appeal was denied:

a) In the case of Plaintiffs FANO, DUSSAULT, HATHAWAY and MC PHERSON the Classification Board recommendation was upheld. (See attached Exhibits Nos. 13 and 14.)

b) In the case of Plaintiff DE BBOSKY, the recommendation of the Board to transfer Plaintiff to M.C.I. Bridgewater was overturned and he was ordered transferred to M.C.I. Walpole. (See Attached Exhibit No. 15.)

c) Defendants HALL and DAWBER made a *sua sponte* review of Plaintiff ROYCE's case and decided to transfer him to M.C.I. Norfolk. (See attached Exhibit No. 16.)

33. Plaintiffs have not been given a written statement of the reasons for the Commissioner's decision, nor of the evidence relied on in making that decision.

34. On or about November 1, 1974, Plaintiff DE BROSKY was transferred to the hospital at M.C.I. Norfolk for medical reasons. There he was kept in segregation status substantially similar to that of the R.B. until about November 18, 1974, when he was allowed on the general ward. He is now awaiting transfer to M.C.I. Walpole. Defendants continued to keep all other Plaintiffs in segregation until approximately December 1, 1974, when they transferred Plaintiffs FANO, DUSSAULT, ROYCE, and MC PHERSON to M.C.I.

Walpole. Plaintiff Hathaway remains in segregation and is awaiting transfer.

35. Defendants held Plaintiffs in segregation without any hearing whatsoever for periods up to nearly a month. In the case of Plaintiff MC PHERSON, he was not even given any reason for his confinement for over a week.

36. When Plaintiffs finally received a hearing, it was before the Classification Board which considered only the question of Plaintiffs' transfer to another facility and not Plaintiffs' pre-hearing or post-hearing segregation.

37. The Classification Hearing did not provide Plaintiffs with the minimal due process rights guaranteed them whenever they are subject to punishment or administrative sanctions which would constitute a grievous loss.

38. Except in the case of Plaintiff ROYCE, neither the Classification Board nor any other fact-finding body has ever determined or recommended that Plaintiffs should be placed in segregation. The determination to segregate Plaintiff ROYCE was overturned by the Commissioner.

39. Defendants' actions in placing and keeping Plaintiffs in segregation without providing Plaintiffs with a hearing which considered the question of whether segregated confinement is appropriate, and which then determined that such segregated confinement is appropriate, and which meets the procedural protections of due process including, at a minimum, those protections outlined in Commissioner's Bulletin 72-1 violates Plaintiffs right to due process of law under the Fourteenth Amendment to the Constitution of the United States.

Second Count

40. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 3 through 38.

41. The determination of the Classification Board to send Plaintiffs to M.C.I. Walpole and M.CI. Bridgewater subjects Plaintiffs to a grievous loss, to wit:

a) M.C.I. Norfolk is a medium security institution, whereas M.C.I. Walpole is a maximum security institution. Therefore, at the latter Plaintiffs are subject to much stricter security measures than at M.C.I. Norfolk. Further, M.C.I. Walpole offers far fewer rehabilitative programs such as educational and work-release opportunities than M.C.I. Norfolk, and it is much more difficult to obtain furloughs.

b) M.C.I. Norfolk is a medium security institution, whereas M.C.I. Bridgewater is a maximum security institution. Therefore, at the latter Plaintiffs are subject to much stricter security measures than at M.C.I. Norfolk. Further, M.C.I. Bridgewater is a much older prison than M.C.I. Norfolk. It is very dirty and unsanitary, with grossly insufficient plumbing installations. It has very limited programs, compared with the full complement of rehabilitat[redacted] programs at M.C.I. Norfolk.

c) Residents at M.C.I. Norfolk are encouraged to take part in institutional affairs. It works a great harm to Plaintiffs to arbitrarily uproot them after they relied upon that encouragement. Plaintiff HATHAWAY, for example, invested a large amount of money and energy in establishing an avocational laundry in the institution, which will be lost when he is transferred out of the institution.

d) The determination to transfer Plaintiffs will be noted on their institutional record and will be considered by the Parole Board, the Furlough Board and other administrative agencies of the Department of Correction, as a conviction on the merits of the disciplinary charges referred to in ¶14. This will have a continuing, deleterious effect upon Plaintiffs' attempts to gain parole, furlough, work release, and other privileges.

42. The punishment described above has been imposed or ordered in violation of the Plaintiffs' constitutional rights to minimal due process:

a) Notice was inadequate. Plaintiffs have not been informed of the charges against them, since the allegations of the disciplinary and classification reports are so vague as to be meaningless, and to make it impossible for Plaintiffs to marshal the facts and prepare a defense. For example, Plaintiff FANO is permitted to have a leather shop in the institution in which he uses and possesses, with the approval of M.C.I. Norfolk authorities, scissors, razors, knives, hammers, etc., yet he is charged with violating institution rules by having "instruments that might be used as weapons."

b) Notice was inadequate, since Plaintiffs were not informed of the evdence against them in that in every case there is only reference to an anonymous informant and a "reliable source."

c) Plaintiffs were not given a meaningful opportunity to respond, since it is impossible to make any defense to charges as vague as these beyond a bare assertion of innocence.

d) At the hearing, Plaintiffs were told nothing of the nature of the secret allegations against them. They were not told with whom they allegedly planned, nor when, nor specifically what they planned to do. They were not told what contraband they were supposedly in possession of. Therefore, they were not afforded a meaningful opportunity to respond.

e) Plaintiffs were denied a meaningful opportunity to respond in that the Classification Board had made its determination before Plaintiffs were given any opportunity whatsoever to respond.

f) The Classification Board did not take the most reliable evidence available to it, in that it did not call the informant before it but relied solely upon Defendant MEACHUM's unsworn, heavy statements. It also did not have an independent representative of the Board interview the informant to make an impartial finding of his reliability, nor was evidence adduced which corroborated the informant's charges. Therefore the finding of the Board was not based on reliable and substantial evidence.

g) The bare statement that the Board found the informant to be reliable is not a constitutionally sufficient explanation for its determination and does constitute a written statement of evidence and reasons for its decision required by due process.

h) Plaintiffs were denied a reasonable opportunity of review, since the Board refused to tape-record Defendant MEACHUM's statement.

43. The actions of Defendants as outlined in ¶11 through 41 *supra*, were directed at the Plaintiffs individually and severally and were taken under color of law.

44. Each Defendant is engaged in a pattern of conduct which violates Plaintiffs' constitutional rights and which will be continued unless judicial relief is granted.

45. Each Plaintiff has suffered and will continue to suffer immediate and irreparable injury and is in need of injunctive relief to protect his rights pending the litigation of this Complaint.

46. The granting of relief directing the Defendants to return Plaintiffs to general population at M.C.I. Norfolk until such time as the Defendants conduct hearings consistent with due process of law to determine Plaintiff's classification status will not substantially prejudice the Defendants. The failure to grant this relief, however, will allow a continuous and grievous loss to be suffered by Plaintiffs in violation of the United States Constitution.

WHEREFORE, PLAINTIFFS pray this Court:

1. Adjudge and declare that Defendants' actions in placing and keeping Plaintiffs in segregation without providing Plaintiffs with a hearing which considered the question of whether segregated confinement is appropriate, which then determined that such segregated confinement is appropriate, and which meets the procedural protections of due process, including, at a minimum, those protections outlined in Commissioner's Bulletin 72-1, violates Plaintiffs right to due process of law under the Fourteenth Amendment to the Constitution of the United States.

2. Adjudge and declare that Defendants' action in transferring Plaintiffs to more restrictive institutions without providing a hearing with the procedural due process protections outlined in ¶41 violates Plantiffs' right to due process of law under the Fourteenth Amendment to the Constitution of the United States.

3. Adjudge and declare that no member of Plaintiff class may be punished or subjected to administrative sanctions solely on the basis of secret informant information.

4. Adjudge and declare that no member of Plaintiff class may be punished or subjected to administrative sanctions unless he is first notified of the charges in specific enough terms that he can marshal the facts and prepare a meaningful defense to them.

5. Adjudge and declare that no member of Plaintiff class may be exposed to punishment or administrative sanctions unless he is informed of the evidence against him, except where the determining body is relying on informant information and that body can show that it is necessary to keep the identity of the informant secret to protect his life or health, in which case the body must inform the member of Plaintiff class of all information received which would not reveal the identity of the informant.

6. Adjudge and declare that no member of Plaintiff class may be punished or subjected to administrative sanctions unless the determining body makes the best practical independent investigation of the facts, and at the very least, the Board or its representative must question the informant.

7. Issue a temporary restraining order ordering Defendants to return Plaintiffs to general population at M.C.I. Norfolk immediately.

8. Issue a preliminary injunction ordering Defendants to return Plaintiffs to general population at M.C.I. Norfolk immediately, and to retain Plaintiffs at M.C.I. Norfolk until such time as Defendants provide Plaintiffs with a due process hearing on the question of transfer.

9. Issue a permanent injunction M.C.I. ordering Defendants to return Plaintiffs to general population at Norfolk until such time as Defendants provide Plaintiffs with a due process hearing on the question of transfer.

10. Issue a permanent injunction ordering Defendants to expunge from the records of Plaintiffs all reference to the disciplinary and classification and proceedings referred to in paragraphs 5, 14, and 21 through 33.

11. Award each Plaintiff judgment for $1000.00 in compensatory damages.

12. Award each Plaintiff judgment for $10,000 for punitive damages.

13. Grant Plaintiffs costs of prosecuting this action and reasonable attorneys' fees.

14. Order such other and further relief as this Court deems appropriate.

Dated: December 12, 1974

(s) Robert Stolzberg
Robert Stolzberg
Linda Olmstead
Roxbury Defenders Committee

126 Warren Street
Roxbury, Massachusetts 02119
(s) Richard Shapiro
Richard Shapiro
Timothy Wilton
Prisoner's Rights Project
2 Park Square
Boston, Massachusetts 02116
(617) 482-2773

Commonwealth of Massachusetts)
: SS.:
County of Suffolk)

The undersigned, attorneys admitted to practice in the courts of Massachusetts, show: that deponents are attorneys of record for plaintiffs in the within action; that deponents have read the foregoing complaint and know the contents thereof; that the same is true to deponents' own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further states that the reason this verification is made by deponent and not by the plaintiff is due to plaintiffs' incarceration at M.C.I., Norfolk.

The grounds of deponents' belief as to all matters not stated upon deponents' knowledge are as follows: personal interviews with plaintiffs and defendants.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: December 12, 1974
Roxbury, Massachusetts

(s) Robert Stolzberg
Robert Stolzberg
Attorney for the Plaintiffs

EXHIBIT 1

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: 10-25-74 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Arthur Fano
No. N21031 Report No. 74-366

Offense: Using threatening or any other improper language toward any other inmate.
Passing or receiving contraband from other inmates.

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI Norfolk which posed a significant threat to person, property and security, it has been determined through a reliable source that Arthur Fano used threatening language toward other inmates, and that he possessed certain instruments that might be used as weapons, and further that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 2

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Richard Debrosky
No. N-19566 Report No. 74-372

Offense: (10) Making or having in your Possession any type of dangerous weapon

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI—Norfolk which posed a significant threat to person, property and security, it has been determined through a very reliable source that Richard Debrosky was in possession of instruments or materials that might be used as weapons and ammunition and further, that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 3

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Robert Dussault
No. N-20427 Report No. 74-368

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY
(s) J. E. MURPHY, *ADS*
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI—Norfolk which posed a significant threat to person, property and security, it has been determined through a very reliable source that Robert Dussault was in possession of instruments or materials that might be used as weapons and ammunition and further, that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 4

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: 10-25-74 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: David Hathaway
No. N-20664 Report. No. 74-374

Offense: (7) Willfully disfiguring or damaging any part of the institution

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of serious fires within MCI Norfolk which caused considerable property damage, and posed a very real threat to personal safety, it has been determined through reliable sources that David Hathaway has been significantly involved in the planning and execution of one or more of these fires.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 6

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Charles Royce
No. N-21546 Report No. 74-370

Offense: (16) Passing or Receiving Contraband from other inmates or visitors
(26) Possession of Narcotics, barbiturates and/or amphetamines

You are hereby notified that you will be seen by the Disciplinary Board/Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY, *ADS*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI—Norfolk which posed a significant threat to person, property, and security, it has been determined through a very reliable source that Charles Royce was involved in the trafficing of Contraband in the institution.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: _____
Officer's recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 7

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

To: Arthur Fano
Date: November 4, 1974

Notice of Classification Hearing

You are hereby notified that a classification hearing will be held at MCI Norfolk by a Department Review Board on Wed., 11-6-74.

Following the hearing, the Department Review Board will make a recommendation to the Commissioner concerning your institutional status or your possible transfer. You may be represented by council at this hearing if you choose. A reasonable continuance may be granted by the Board if needed, for this purpose.

The department has received information through a reliable source that you were in possession of instruments, or materials, that might be used as weapons and/or ammunition and that you had joined in plans to use these contraband items.

These items and plans occurred during a period of serious unrest at MCI, Norfolk which included many fires that posed a significant threat to the lives of persons at MCI, Norfolk as well as serious property damage.

In view of this information, a review of your record and classification status is required.

Based on the seriousness of the danger represented, the Superintendent has decided that your confinement in an awaiting action area, pending a hearing, was necessary.

(s) LARRY SOLOMON *(BG)*
LARRY SOLOMON
Deputy Commissioner
Classification and Treatment

cc: Chairman, Departmental Review Board
Superintendent, MCI Norfolk
Frank A. Hall, Commissioner

/lt

EXHIBIT 8

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

To: Robert Dussault
Date: November 4, 1974

Notice of Classification Hearing

You are hereby notified that a classification hearing will be held at MCI Norfolk by a Department Review Board on Wed., 11-6-74.

Following the hearing, the Department Review Board will make a recommendation to the Commissioner concerning your institutional status or your possible transfer. You may be represented by council at this hearing if you choose. A reasonable continuance may be granted by the Board if needed, for this purpose.

The department has received information through a reliable source that you were in possession of instruments, or materials, that might be used as weapons or ammunition and that you had joined in plans to use these contraband items.

These items and plans occurred during a period of serious unrest at MCI, Norfolk which included many fires that posed a significant threat to the lives of persons at MCI, Norfolk as well as serious property damage.

In view of this information, a review of your record and classification status is required.

Based on the seriousness of the danger represented, the Superintendent has decided that your confinement in an awaiting area, pending a hearing, was necessary.

(s) LARRY SOLOMON *(BG)*
LARRY SOLOMON
Deputy Commissioner
Classification and Treatment

cc: Chairman, Departmental Review Board
Superintendent, MCI Norfolk
Frank A. Hall, Commissioner

/lt

EXHIBIT 9

[Letterhead — ROXBURY DEFENDERS COMMITTEE, INC.]

November 13, 1974

Mr. Frank A. Hall
Commissioner
The Commonwealth of Massachusetts
Department of Correction
Leverett Saltonstall Building
Government Center
100 Cambridge Street
Boston, Massachusetts 02202

Re: *David Hathaway*

Dear Sir:

I am writing on behalf of Mr. David Hathaway to appeal the Departmental Classification Review Board's determination of November 8, 1974, to transfer Mr. Hathaway from M.C.I., Norfolk, to M.C.I., Bridgewater.

Mr. Hathaway faced serious deprivations based on what were essentially disciplinary charges. His transfer from M.C.I., Norfolk, where he has built up a flourishing laundry business in which he has a sizable investment and which he will, under the circumstances, find it difficult if not impossible to successfully liquidate, will work a grave hardship upon him. Therefore, he is guaranteed by the United States Constitution due process, which he did not receive:

1) Since the hearing was predicted upon disciplinary charges the accuracy of which had never been determined, the hearing was illegitimate *per se*.

2) He did not receive notice of the charges against him, in that the notification given him was so vague and conclusory, not specifying what contraband "instruments, or materials" he allegedly possessed, nor when he possessed them; not specifying with whom, when and where he "had

joined in plans to use these contraband items;" and not specifying what the alleged conspirators planned to do.

3) The Board did not take the best evidence available, in that it admittedly based its decision solely upon the hearsay testimony of Superintendent Meachum, rather than calling the "reliable source" to testify, despite Mr. Hathaway's request that they do so.

4) He was not given any indication of the evidence against him, beyond the bare assertion that there was "a reliable source."

5) The Board refused to allow Mr. Hathaway, or his representative, the opportunity to hear any evidence given against him; it further refused to recapitulate the evidence against him. This effectively denied him any opportunity to respond, as well as denying him an opportunity to confront or cross-examine adverse witnesses.

6) The Board stated that it had determined that the source of the charges were reliable before it heard from Mr. Hathaway, thereby depriving him of the opportunity to have a meaningful input in the determination of the most important issue.

7) The bare statement that the Board found the informant to be reliable is not a sufficient explanation of the reasons for its determination.

8) Mr. Hathaway was denied a reasonable opportunity to appeal, because the Board refused to tape-record Superintendant Meachum's statement, thus preventing the reviewing body from having the opportunity to review the key element of the proceeding. The Board's refusal was made despite Mr. Hathaway's acceptance of the condition that the tape would remain in the custody of the Department of Correction, and that neither Mr. Hathaway nor his representatives would have access to the tape.

9) Mr. Hathaway's institutional record is excellent. He

has had no disciplinary reports, and he submitted to the Board a highly favorable letter from his supervisor on his institutional job. His Social Worker, Mr. Jack Jackson, told the Board that in his role as unit representative he had been instrumental in the past in keeping tensions under control at M.C.I. Norfolk, and preventing disturbances.

For the above-stated reasons, we respectfully urge you to reverse the Board's determination to transfer Mr. Hathaway to M.C.I., Bridgewater, and to restore him to general population at M.C.I., Norfolk.

Sincerely yours,
ROBERT A. STOLZBERG
Staff Attorney

RAS:mw
cc: David Hathaway

EXHIBIT 10

November 15, 1974

Mr. Frank A. Hall
Commissioner
The Commonwealth of Massachusetts
Department of Correction
Leverett Saltonstall Building
Government Center
100 Cambridge Street
Boston, Massachusetts 02202

Re: Arthur Fano

Dear Sir:

I am writing on behalf of Mr. Arthur Fano to appeal the Departmental Classification Review Board's determination of November 11, 1974, to transfer Mr. Fano from M.C.I., Norfolk, to M.C.I., Walpole.

Since Mr. Fano faced, and in fact received, serious depri-

vations based on what were essentially disciplinary charges, he is guaranteed by the United States Constitution due process, which he did not receive:

1) Since the hearing was predicated upon disciplinary charges, the accuracy of which has never been determined, the hearing was illegitimate *per se.*

2) He did not receive notice of the charges against him, in that the notification given him was so vague and conclusory, not specifying what contraband "instruments, or materials" he allegedly possessed, nor when he possessed them; not specifying with whom, when and where he "had joined in plans to use these contraband items;" and not specifying what the alleged conspirators planned to do.

3) The Board did not take the best evidence available, in that it admittedly based its decision solely upon the hearsay testimony of Superintendent Meachum, rather than calling the "reliable source" to testify, despite Mr. Fano's request that they do so. The board further refused Mr. Fano's offer to take a lie-detector test, as the best available method of determining the accuracy of the charges against him.

4) He was not given any indication of the evidence against him, beyond the bare assertion that there was "a reliable source."

5) The Board refused to allow Mr. Fano, or his representative, the opportunity to hear any evidence given against him; it further refused to recapitulate the evidence to respond, as well as denying him an opportunity to confront or cross-examine adverse witnesses.

6) The Board determined that the source of the charges were reliable before it heard from Mr. Fano, thereby depriving him of the opportunity to have a meaningful in-put in the determination of the most important issue.

7) The bare statement that the Board found the inform-

ant to be reliable is not a sufficient explanation of the reasons for its determination.

8) Mr. Fano was denied a reasonable opportunity to appeal, because the Board refused to tape-record Superintendant Meachum's statement, thus preventing the reviewing body from having the opportunity to review the key element of the proceeding. The Board's refusal was made despite Mr. Fano's acceptance of the condition that the tape would remain in the custody of the Department of Correction, and that neither Mr. Fano, nor his representatives would have access to the tape.

9) Mr. Fano's institutional record is excellent. He has had only one minor disciplinary report. He also presented the testimony of Mr. William Leonard, the Athletic Director, who stated that Mr. Fano had always been very fair and helpful in their dealings, and had worked hard and never caused any trouble. In light of this, he should have been restored to general population at M.C.I., Norfolk.

For the above-stated reasons, we respectfully urge you to reverse the Board's determination to transfer Mr. Fano to M.C.I., Walpole, and to restore him to general population at M.C.I., Norfolk.

Sincerely yours,
ROBERT A. STOLZBERG
Staff Attorney

RAS:mt
cc: Arthur Fano
M.C.I., Norfolk
Box 43
Norfolk, Massachusetts

EXHIBIT 11

November 13, 1974

Mr. Frank A. Hall
Commissioner
The Commonwealth of Massachusetts
Department of Correction
Leverett Saltonstall Building
Government Center
100 Cambridge Street
Boston, Massachusetts 02202

Re: *Robert Dussault*

Dear Sir:

I am writing on behalf of Mr. Robert Dussault to appeal the Departmental Classification Review Board's determination of November 8, 1974, to transfer Mr. Dussault from M.C.I., Norfolk, to M.C.I., Walpole.

Since Mr. Dussault faced, and in fact received serious deprivations based on what were essentially disciplinary charges, he is guaranteed by the United States Constitution due process, which he did not receive:

1) Since the hearing was predicated upon disciplinary charges the accuracy of which had never been determined. the hearing was illegitimate *per se.*

2) He did not receive notice of the charges against him, in that the notification given him was so vague and conclusory, specifying what contraband "instruments, or materials he allegedly possessed, nor when he possessed them; not specifying with whom, when and where he had joined in plans to use these contraband items;" and not specifying what the alleged conspirators planned to do.

3) The Board did not take the best evidence available, in that it admittedly based its decisions solely upon the hearsay testimony of Superintendent Meachum, rather than calling the "reliable source" to testify, despite Mr. Dussault's request that they do so.

4) He was not given any indication of the evidence against him, beyond the bare assertion that there was "a reliable source."

5) The Board refused to allow Mr. Dussault of his representative the opportunity to hear any evidence given against him; it further refused to recapitulate the evidence against him. This effectively denied him any opportunity to respond, as well as denying him an opportunity to confront or cross-examine adverse witnesses.

6) The Board stated that it had determine that the source of the charges was reliable before it heard from Mr. Dussault, thereby depriving him of the opportunity to have a meaningful in-put in the determination of the most important issue.

7) The bare statement that the Board found the informant to be reliable is not a sufficient explanation of the reasons for its determination.

8) Mr. Dussault's institutional record is excellent. He has had no disciplinary reports for five years, and he submitted to the Board a highly favorable letter from his supervisor on his institutional job. In light of this, he should have been restored to general population at M.C.I., Norfolk. If this was impossible, he should have been transferred to Monroe or Walpole.

For the above-stated reasons, we respectfully urge you to reverse the Board's determination to transfer Mr. Dussault to M.C.I., Walpole, and to restore him to general population at M.C.I., Norfolk. If, for any reason, this is impossible, we urge you to modify their decision and order his transfer to Monroe, or Concord.

Sincerely yours,
Robert A. Stolzberg
Staff Attorney

rs:mw
cc. Robert Dussault

EXHIBIT 12

November 15, 1974

Mr. Frank A. Hall
Commissioner
The Commonwealth of Massachusetts
Department of Correction
Leverett Saltonstall Building
Government Center
100 Cambridge Street
Boston, Massachusetts 02202

Re: Richard DeBrosky

Dear Sir:

I am writing on behalf of Mr. Richard DeBrosky to appeal the Departmental Classification Review Board's determination of November 13, 1974, to transfer Mr. DeBrosky from M.C.I., Norfolk to M.C.I., Bridgewater.

Mr. DeBrosky faced serious deprivations based on what were essentially disciplinary charges. He had adjusted extremely well to Norfolk, where he greatly benefited from his job of visiting room attendant, and photographer. His transfer from Norfolk will work grave hardship upon him, and he is, therefore, guaranteed due process by the United States Constitution. Due Process was not, however, afforded:

1) Since the hearing was predicated upon disciplinary charges, the accuracy of which had never been determined, the hearing was illegitimate *per se.*

2) He did not receive notice of the charges against him, in that the notification given him was so vague and conclusory, not specifying what contraband "instruments, or materials" he allegedly possessed, nor when he possessed them; not specifying with whom, when and where he "had joined in plans to use these contraband items;" and not specifying what the alleged conspirators planned to do.

3) The Board did not take the best evidence available, in that it admittedly based its decision solely upon the

hearsay testimony of Superintendent Meachum, rather than calling the "reliable source" to testify.

4) He was not given any indication of the evidence against him, — beyond the bare assertion that there was "a reliable source."

5) The Board refused to allow Mr. DeBrosky, or his representative, the opportunity to hear any evidence given against him; it further refused to recapitulate the evidence against him. This effectively denied him any opportunity to confront or cross-examine adverse witnesses.

6) The bare statement that the Board found the informant to be reliable is not a sufficient explanation of the reasons for its determination.

7) Mr. DeBrosky was denied a reasonable opportunity to appeal, because the Board refused to tape-record Superintendant Meachum's statements, thus preventing the reviewing body from having the opportunity to review the key element of the proceeding. The Board's refusal was made despite Mr. DeBrosky's acceptance of the condition that the tape would remain in the custody of the Department of Correction, and that neither Mr. DeBrosky, nor his representatives would have access to the tape.

8) Mr. DeBrosky's institutional record is excellent. He has had no disciplinary reports for over four years, and has completed ten successful furloughs. In light of this, he should have been restored to general population at M.C.I., Norfolk.

For the above-stated reasons we respectfully urge you to reverse the Board's determination to transfer Mr. DeBrosky to M.C.I., Bridgewater, and to restore him to general population at M.C.I., Norfolk.

Sincerely yours,
Robert A. Stolzberg
Staff Attorney

RAS:mt
cc: Richard DeBrosky

EXHIBIT 13

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

November 21, 1974

Robert Stolzberg, Staff Attorney
Roxbury Defenders Committee, Inc.
124-126 Warren Street
Roxbury, Mass. 02119

RE: Robert Dussault, Arthur Fano, and
David Hathaway

Dear Mr. Stolzberg:

The Commissioner has received your requests for appeal concerning the recommendations forwarded to him by the Departmental Classification Review Boards which met at MCI-Norfolk. He has forwarded this correspondence to me for reply.

Your requests for appeal are being denied. After a thorough review of the facts, with considerable thought and evaluation being given to the issue of intelligence information and its reliability, it has been decided that the recommendations of the board will be implimented.

It is my belief that departmental policy concerning the introduction of intelligence information was adhered to during the hearings.

If you so desire, you may have access to the tapes of the proceedings in our central office. For the purpose of making necessary arrangements you may contact Edward Brewer, Attorney (727-3324).

Thank you for your concern.

Sincerely yours,
(s) WILLIAM C. DAWBER
WILLIAM C. DAWBER
Acting Deputy Commissioner
for Classification and Treatment

cc: Edward Brewer
File

EXHIBIT 14

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

November 26, 1974

Ms. Linda Olmstead, Attorney
Roxbury Defenders Committee Inc.
124-126 Warren Street
Roxbury, MA 02119

RE: Richard McPherson

Dear Ms. Olmstead:

The Commissioner has received your request for appeal concerning the recommendations forwarded to him by the Departmental Classification Review Board which met at MCI-Norfolk on 1-13-74 concerning Richard McPherson. He has forwarded this correspondence to me for reply.

Your request for appeal is being denied. After a thorough review of the facts, with considerable thought and evaluation being given to the issue of intelligence information and its reliability, it has been decided that the recommendations of the Board will be implemented.

It is my belief that Departmental policy concerning the introduction of intelligence information was adhered to during the hearings.

Sincerely yours,
(s) WILLIAM C. DAWBER
WILLIAM C. DAWBER, MSW, ACSW
Acting Deputy Commissioner
for Classification and Treatment

WCD:td
cc: Central File

EXHIBIT 15

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

November 26, 1974

Robert Stolzberg, Staff Attorney
Roxbury Defenders Committee, Inc.
124-126 Warren Street
Roxbury, MA 02119

RE: Richard DeBrosky

Dear Mr. Stolzberg:

The Commissioner is in receipt of your correspondence of 11-15-74 concerning your request for appeal of the recommendations forwarded to him by the Departmental Classification Review Board which met at MCI-Norfolk of 11-13-74 in regards to Richard DeBrosky. He has forwarded this correspondence to me for reply.

As you are aware, the recommendation of the Board was for placement at MCI-Bridgewater. However, after a thorough review of the facts, with considerable concern being given to the intelligence information that connected Mr. DeBrosky with involvement with a weapon, the Commissioner has decided to place Mr. DeBrosky at MCI-Walpole. The intelligence information referred to above was judged to be reliable. Your request that the subject be placed back into the population at MCI-Norfolk is being denied.

It is my belief that departmental policy concerning the introduction of intelligence information was adhered to during the hearing.

Sincerely yours,
(s) WILLIAM C. DAWBER
WILLIAM C. DAWBER, MSW, ACSW
Acting Deputy Commissioner
for Classification and Treatment

WCD:td
cc: File

EXHIBIT 16

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

Date: Nov. 21, 1974

Resident's Name: Charles Royce
Location: MCI, Norfolk
RE: Decision on Present Classification Status

Dear Mr. Royce:

I have received the recommendations of the:

[ ] Community-Based Reclassification Committee
[ ] Inter-Institutional Reclassification Committee
[x] Departmental Review Board

that was convened at MCI, Norfolk on 11-6-74 to review your current classification status, including placement.

Upon careful examination of all related materials and information, I have reached the following decision:

Placement: MCI, Walpole

Reasons: I disagree with the recommendation of the Board and I am assigning you to MCI, Walpole because I feel that you have demonstrated that you are unwilling and/or unable to accept the responsibility that is comensurate with assignment to MCI, Norfolk, a medium security facility. Your actions of Nov. 1, 1974 whereby you destroyed state property and displayed disrespect to a Correctional Officer have played a part in this decision.

Very truly yours,
(s) FRANK A. HALL
FRANK A. HALL, *Commissioner*

cc: William Dawber
Larry Meachum
Walt Waitkevich
File

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

[TITLE OMITTED IN PRINTING]

MOTION FOR IN CAMERA INSPECTION OF EVIDENCE AND FOR THE ISSUANCE OF A PROTECTIVE ORDER RELATING TO SUCH EVIDENCE

Now come the defendants in the above-entitled matter and, by their attorney, move this Court to allow the defendants to present documentary evidence *in camera,* which evidence consists of information obtained from informants at MCI, Norfolk, substantially identifying those informants and bearing directly upon that behavior of the plaintiffs which formed the basis for the actions taken by the defendants which are the focal point of the instant complaint. Defendants maintain that such evidence may not be devulged, directly or indirectly, to either the plaintiffs or their counsel without creating a substantial risk of grievous injury and loss of life to the particular informants involved.

Respectfully,
ROBERT H. QUINN
Attorney General
(s) WILLIAM T. HAROLD, III
WILLIAM T. HAROLD, III
Deputy Assistant Attorney General

Denied 12-20-74
(s) ILLEGIBLE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
[TITLE OMITTED IN PRINTING]

STIPULATION

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN ATTORNEYS OF THE RESPECTIVE PARTIES THAT (NUMBERS CORRESPOND TO PARAGRAPHS IN THE AMENDED COMPLAINT):

3. Plaintiffs ARTHUR FANO, RICHARD DE BROSKY, ROBERT DUSSAULT, DAVID HATHAWAY, RICHARD MC PHERSON and CHARLES ROYCE are all inmates of Massachusetts Correctional Institutions, serving sentences imposed by the Courts of Massachusetts.

4. Defendant LARRY MEACHUM is the Superintendent of M.C.I., Norfolk and, as such, is responsible under state law for the overall supervision, management, and control of M.C.I. Norfolk, including the immediate responsibility for the discipline and classification of inmates confined therein. He is being sued in his individual and official capacities.

5. Defendant FRANK HALL is the Commissioner of Correction for the Commonwealth of Massachusetts and, as such, is responsible under state law for the policies and procedures for determining and reviewing the classification status of Plaintiffs, and is also ultimately responsible for developing and implementing classification, as well as disciplinary policies and procedures. He is being sued in his individual and official capacities.

6. Defendant WILLIAM DAWBER was Acting Deputy Commissioner for Classification and Treatment from November 9, 1974, until December 13, 1974, and, as such, was responsible during that period for formulating and supervising the policies and procedures for classification. Defendant DAWBER is being sued in his individual and official capacities. His successor in office is DAVID HALEY.

11. Plaintiff RICHARD MC PHERSON was taken from

M.C.I., Norfolk general population on or about October 16, 1974, and placed in a cell in the Receiving Building at M.C.I., Norfolk (hereinafter the R.B.). He did not receive any written notice or hearing prior to being placed in the R.B.

12. Plaintiffs ARTHUR FANO, RICHARD DE BROSKY, ROBERT DUSSAULT, DAVID HATHAWAY and CHARLES ROYCE were taken from general population at M.C.I., Norfolk on October 24, 1974, and placed in cells in the R.B. They were not provided with any prior written notice of the reason for their placement in the R.B. nor with any hearing prior to their placement therein.

13. On October 25, 1974, the Plaintiffs' attorneys spoke with Defendant MEACHUM. At that time he assured Plaintiffs' attorneys that by the end of that day the men in the R.B. would be given disciplinary reports or be released from the R.B.

14. On October 25, 1974, Plaintiffs were given disciplinary reports. Each was signed by Defendant MEACHUM.

14a) through 14e). Exhibits 1, 2, 3, 4, and 6 are accurate and authentic.

14f). Exhibit 6A, attached hereto, is an accurate and authentic copy of the notice given to Plaintiff Mc PHERSON.

15. Each of the above cases was referred to the District Attorney's office for investigation and prosecution pursuant to M.G.L. ch. 127 §38C.

16. On or about October 30, 1974, Plaintiffs' attorneys spoke with Defendant MEACHUM's agents, Susan Richmond and Deputy Superintendent John Murphy, and requested, on Plaintiffs' behalf, that a hearing be held to determine Plaintiffs' custody status.

17. On or about November 25, 1974, Defendant MEACHUM received a letter from the District Attorney's Office, stating, in part, that his investigation "has not at this time revealed sufficient evdence against these subjects [including Plaintiffs in the instant case] to proceed against them criminally".

18. No disciplinary hearing pursuant to Commissioner's Bulletin 72-1 has been held on the charges referred to in Paragraph 14 of the Amended Complaint.

19. Being placed in the R.B. instead of general population, changes the conditions of Plaintiffs' confinement, to wit:

a) Plaintiffs were locked in their cells 23 hours a day, although in general population inmates are never locked in their cells.

b) Plaintiffs were not permitted to have their personal property, including radios or televisions, that they could have in general population.

c) The only facility for washing clothes in the R.B., other than the showers, is the sink in each Plaintiff's cell, unlike the laundry service they could use in general population.

d) Plaintiffs are allowed to exercise for one hour every other day. This time is restricted to a fenced-in area on the roof. In general population, there are baseball, football, basketball, handball, and other recreational facilities, and depending upon his schedule an inmate can spend eight or more hours per day using these facilities.

e) Plaintiffs are not permitted access to the rest of the prison population.

f) Plaintiffs are not permitted to take part in prison programs for their rehabilitation, including school and work programs, unlike inmates in general population. They are denied the wages they could earn were they allowed to work.

g) Plaintiffs are not allowed to go to the canteen as are members of general population.

20. On November 4, 1974, Plaintiffs filed the original complaint in this case, asking for a Temporary Restraining Order and other relief, Plaintiffs notified Defendant MEACHUM's counsel, Robert Bell, Esq., Chief Counsel for the Department of Correction, of the action.

21. On the evening of November 4, 1974, Plaintiffs were served with notice that they would receive classification hearings before a Department Review Board pursuant to Department Order 4400.1, to determine Plaintiffs' custody status and possible transfer.

21a. Exhibits Nos. 8A, 8B, 8C, and 8D, attached hereto, are authentic and accurate copies of the classification notices received by Plaintiffs DE BROSKY, HATHAWAY, MC PHERSON, and ROYCE.

21c. Exhibit 8E, attached hereto, is an authentic and accurate copy of Department Order 4400.1 §6.4.

22. On November 6, 8, 11, 13, and 14, 1974, Plaintiffs' classification hearings were held. At each hearing the procedure was basically the same. Each Plaintiff was allowed to tape record the hearing, provided that the Department of Correction maintained control of the tapes afterwards.

23. The Board opened each hearing by reading a prepared statement. It then ordered the Plaintiff, and his representative, to leave the room, while it took unsworn, hearsay testimony from Defendant MEACHUM, which, the Board stated, consisted of informant information concerning Plaintiffs. In each case the Board:

a) Refused to call and question the informant, and relied instead upon the hearsay testimony of Defendant MEACHUM. The Board stated it had inquired into the reliability of the informant or informants.

b) Refused to tape-record Defendant MEACHUM's testimony, after Plaintiffs agreed that they would not have access to that part of the tape, but merely wanted

to preserve a record for a possible review of the proceedings. The Board stated that it would take notes of Defendant MEACHUM's testimony.

c) Defendant MEACHUM's testimony was not taken under oath.

24. After Defendant MEACHUM has completed his testimony and left, each Plaintiff was brought back into the hearing. In at least one case, that of Plaintiff DUSSAULT, the Board stated that it had determined on the basis of Defendant MEACHUM's testimony that the anonymous informant was reliable before hearing any testimony presented by Plaintiff.

25. The Board informed Plaintiffs only that Defendant MEACHUM's testimony supported the allegations contained in the notices.

26. The Board then heard evidence from each Plaintiff's social workers, and any witnesses he could produce. The Board refused to compel any officers to appear and testify in behalf of Plaintiffs as they had requested. Certain officers voluntarily appeared before the Board or submitted written statements on behalf of certain Plaintiffs.

28. Each Plaintiff denied to the Board any activity alleged in the disciplinary charges and in the notice of the classification hearing.

29. At the conclusion of each hearing, the Board announced its recommendations:

a) DAVID HATHAWAY was to be transferred to M.C.I. Bridgewater.

b) ARTHUR FANO was to be transferred to M.C.I. Walpole.

c) ROBERT DUSSAULT was to be transferred to M.C.I. Walpole.

d) RICHARD DE BROSKY was to be transferred to M.C.I. Bridgewater.

e) Richard Mc Pherson was to be transferred to M.C.I. Walpole.

f) Charles Royce was to be held in administrative segregation for 30 days and be given a second classification hearing at the end of 30 days.

30. Plaintiffs were not given a written statement of the reasons for the Board's action, nor of the evidence relied upon. Plaintiffs were orally informed by the Board that its recommendations were based upon informant information presented by Defendant Meachum.

31. Despite their request, Plaintiffs were not allowed to see the report later prepared by the Board to Defendant Hall recommending their transfer, nor were they informed of its contents beyond the statement referred to in Stipulation 30. Under Department Order 4400.1 §6.4, (Exhibit 8E), a written report was sent to Defendant Dawber, who reviewed it and forwarded it to Defendant Hall for his decision.

32. Each Plaintiff except Royce appealed to the Commissioner to review the Board's determination and to order that he be placed in general population at M.C.I. Norfolk. Exhibits 9 through 12, attached to Amended Complaint, are accurate an authentic. A review was personally made by Defendants Hall and Dawber. They did not make an independent investigation other than by speaking with members of the Classification Board and possibly Defendant Meachum. Defendants Hall and Dawber do not recall the details of those conversations. Except for such conversations, Defendants Hall and Dawber relied wholly upon the reports of the Classification Board. Attached here as Exhibit 12A through 12F. Exhibit 12A through 12F are authentic. They did not listen to the tape recordings made of some of the hearings. Each appeal was denied:

a) In the case of Plaintiffs Fano, Dussault, Hathaway and Mc Pherson the Classification Board recommendation was upheld. Exhibit Nos. 13 and 14, attached to Amend Complaint are accurate and authentic.

b) In the case of Plaintiff De Brosky, the recommendation of the Board to transfer Plaintiff to M.C.I. Bridgewater was overturned and he was ordered transferred to M.C.I. Walpole. Exhibit No. 15, attached to Amended Complaint, is accurate and authentic.

c) Defendants Hall and Dawber reviewed Plaintiff Royce's case and decided to transfer him to M.C.I., Walpole. Exhibit No. 16, attached to Amended Complaint, is authentic and accurate.

33. Plaintiffs have not been given a written statement of the reasons for the Commissioner's decision, nor of the evidence relied on in making that decision, beyond the statements in Exhibits 13 through 16, attached to Amended Complaint.

34. On or about November 1, 1974, Plaintiff De Brosky was transferred to the hospital at M.C.I. Norfolk for medical reasons. There he was kept in a status substantially similar to that of the R.B. until about November 18, 1974, when he was allowed on the general ward. He is now awaiting transfer to M.C.I. Walpole. Defendants continued to keep all other Plaintiffs in the R.B. until they transferred Plaintiffs to M.C.I., Walpole. Plaintiffs Dussault and Royce on November 25, 1974. Plaintiff Fano on November 26, 1974 and Plaintiff Mc Pherson on December 2, 1974. Plaintiff Hathaway remains in the R.B. and is awaiting transfer.

36. The Classification Board did not make any recommendation concerning detention in the R.B.

41a). M.C.I., Norfolk is a medium security institution,

whereas M.C.I., Walpole is a maximum security institution. The security at M.C.I., Walpole is stricter than at M.C.I., Norfolk. M.C.I., Walpole offers fewer rehabilitative programs such as educational and work-release opportunities than M.C.I., Norfolk. It is more difficult to obtain furloughs at M.C.I., Walpole than M.C.I., Norfolk.

b). M.C.I., Norfolk is a medium security institution. Parts of M.C.I., Bridgewater are maximum security. Therefore, at the latter Plaintiffs may be subject to stricter security measures than at M.C.I., Norfolk. M.C.I., Bridgewater is a much older institution than M.C.I., Norfolk. It has fewer rehabilitative programs, than M.C.I., Norfolk.

d). The determination to transfer Plaintiffs, and the basis therefor, will be noted on their institutional record and will be considered by the Parole Board, the Furlough Board and other administrative agencies of the Department of Correction. This may affect Plaintiffs' attempts to gain parole, furlough, work release, and other privileges.

43. The actions of Defendants herein stipulated were taken under color of law.

ROBERT A. STOLZBERG, ESQ.
Roxbury Defenders Committee, Inc.
124 Warren Street
Roxbury, Massachusetts 02119
ROBERT QUINN, ESQ.
Attorney General
131 Tremont Street
Boston, Massachusetts

By

WILLIAM T. HARROD, III, ESQ.
Assistant Attorney General
Criminal Division

Dated: Boston, Massachusetts
December 20, 1974

EXHIBIT 6A

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: 10-25-74 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Richard Mc Pherson
No. N21608 Report No. 74-383

Offense: Willfully disfiguring or damaging any part of the institution or any material or tool.

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on ——— at ——— o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND
SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of serious fires within MCI Norfolk which caused considerable property damage and posed a very real threat to personal safety, it has been determined through reliable sources that Richard Mc Pherson willfully damaged State property and that he has been significantly involved in the planning and execution of one or more of these fires.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: ———
Officer's recommendation: ———
Supervising Officer's comment and review: ———
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 8A

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

To: Richard DeBrosky
Date: November 4, 1974

NOTICE OF CLASSIFICATION HEARING

You are hereby notified that a classification hearing will be held at MCI Norfolk by a Department Review Board on Wed., 11-6-74.

Following the hearing, the Department Review Board will make a recommendation to the Commissioner concerning your institutional status or your possible transfer. You may be represented by council at this hearing if you choose. A reasonable continuance may be granted by the Board if needed, for this purpose.

The department has received information through a reliable source that you were in possession of instruments, or materials, that might be used as weapons and/or ammunition and that you had joined in plans to use these contraband items.

These items and plans occurred during a period of serious unrest at MCI, Norfolk which included many fires that posed a significant threat to the lives of persons at MCI, Norfolk as well as serious property damage.

In view of this information, a review of your record and classification status is required.

Based on the seriousness of the danger represented, the Superintendent has decided that your confinement in an awaiting action area, pending a hearing, was necessary.

(s) LARRY SOLOMON
LARRY SOLOMON
Deputy Commissioner
Classification and Treatment

(s) RICHARD DEBROSKY

cc: Chairman, Departmental Review Board
Superintendent, MCI Norfolk
Frank A. Hall, Commissioner

EXHIBIT 8B

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

To: David Hathaway
Date: November 4, 1974

NOTICE OF CLASSIFICATION HEARING

You are hereby notified that a classification hearing will be held at MCI Norfolk by a Department Review Board on Wed., 11-6-74.

Following the hearing, the Department Review Board will make a recommendation to the Commissioner concerning your institutional status or your possible transfer. You may be represented by council at this hearing if you choose. A reasonable continuance may be granted by the Board if needed, for this purpose.

The department has received information through a reliable sources that you were significantly involved in the planning and execution of one or more of the serious fires occurring with MCI Norfolk in the past few weeks. These fires caused considerable property damage and posed a very real threat to personal safety.

In view of this information, a review of your record and classification status is required.

Based on the seriousness of the danger represented, the Superintendent has decided that your confinement in an awaiting action area, pending a hearing, was necessary.

(s) LARRY SOLOMON
LARRY SOLOMON
Deputy Commissioner
Classification and Treatment

Resident notified — Copy handed to Resident.
11-4-74 (s) ILLEGIBLE

cc: Chairman, Departmental Review Board
Superintendent, MCI Norfolk
Frank A. Hall, Commissioner

EXHIBIT 8C

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

To: Richard McPherson
Date: November 4, 1974

NOTICE OF CLASSIFICATION HEARING

You are hereby notified that a classification hearing will be held at MCI Norfolk by a Department Review Board on Wed., 11-6-74.

Following the hearing, the Department Review Board will make a recommendation to the Commissioner concerning your institutional status or your possible transfer. You may be represented by council at this hearing if you choose. A reasonable continuance may be granted by the Board if needed, for this purpose.

The department has received information through a reliable sources that you were significantly involved in the planning and execution of one or more of the serious fires occurring with MCI Norfolk in the past few weeks. These fires caused considerable property damage and posed a very real threat to personal safety.

In view of this information, a review of your record and classification status is required.

Based on the seriousness of the danger represented, the Superintendent has decided that your confinement in an awaiting action area, pending a hearing, was necessary.

(s) LARRY SOLOMON
LARRY SOLOMON
Deputy Commissioner
Classification and Treatment

Resident notified — Copy handed out to Resident.
11-4-74 (s) ILLEGIBLE

cc: Chairman, Departmental Review Board
Superintendent, MCI Norfolk
Frank A. Hall, Commissioner

EXHIBIT 8D

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

To: Charles Royce
Date: November 4, 1974

NOTICE OF CLASSIFICATION HEARING

You are hereby notified that a classification hearing will be held at MCI Norfolk by a Department Review Board on Wed., 11-6-74.

Following the hearing, the Department Review Board will make a recommendation to the Commissioner concerning your institutional status or your possible transfer. You may be represented by council at this hearing if you choose. A reasonable continuance may be granted by the Board if needed, for this purpose.

The department has received information through a reliable source that you were involved in the trafficking of contraband in MCI Norfolk, (narcotics, barbiturates and/or amphetamines.) This occurred during a period of serious unrest at MCI Norfolk which included many fires, that posed a significant threat to the lives of persons at MCI Norfolk as well as serious property damage.

In view of this information, a review of your record and classification status is required.

Based on the seriousness of the danger represented, the Superintendent has decided that your confinement in an awaiting action area, pending a hearing, was necessary.

(s) LARRY SOLOMON
LARRY SOLOMON
Deputy Commissioner
Classification and Treatment

Resident notified — Copy handed out to Resident.
11-4-74 (s) ILLEGIBLE

cc: Chairman, Departmental Review Board
Superintendent, MCI Norfolk
Frank A. Hall, Commissioner

EXHIBIT 12A

SUMMARY AND RECOMMENDATION
OF CLASSIFICATION PROCEEDING

Institution/Facility: MCI Norfolk Date: Nov. 8, 1974

[ ] Inter-Institutional
[ ] Community-Based
[x] Departmental Review Board
[ ] Other (specify) ———————

Resident's Name: Robert Dussault Number: N 20427
age: 34 PE 1-17-75

Recommendation:
Placement: MCI Walpole
Conditions: None

Narrative: Attorney Robert Stolzberger;
Roxbury Defenders Comm.
Interview was not taped.

The order of the hearing was a general overview of the proceedings opening with an introduction of the members of the committee and the reading of a prepared statement as to the purpose of the hearing. Mr. Dussault and his attorney were then advised that Mr. Larry Meachum, Supt. of MCI Norfolk, would be called to present informant information in closed session. Mr. Stolzberger presented a formal objection to the presentation of such material. Objection was duly noted for the record. Mr. Stolzberger then asked to remain during Mr. Meachum's report to the committee. Request was denied.

Mr. Stolzberger then made the following statement: "I believe the board is improperly convened and take part under protest."

Chairman duly noted protest, and Mr. Dussault and attorney left room. Mr. Larry Meachum arrived and presented his informant information and a review of the reliability of sources. That material is found in final part of this report.

When Mr. Meachum left, Mr. Dussault and his attorney returned. The hearing was re-opened with a reading of the notice of Classification Hearing as delivered to Mr. Dussault. Mr. Belcher asked of Mr. Dussault his feeling and beliefs as regards the notice, and the charges. Mr. Dussault denied categorically all charges, but stated that he feels that he has been too outspoken re: administration. He stated that the only "weapons" that he had had contact with are tools of his trade (plumber) a wrench, a screwdriver, a hammer, etc. Notice was served to Mr. Dussault that the committee regarded the sources as presented by Mr. Meachum as reliable. "We have heard information which links you to the existance of weapons and contributing to unrest at MCIN"

Mr. Stolzberger again objected. Ms. Briana Murphy, Social Worker, then presented the following social and criminal history:

Brief Criminal History:

History began with juvenile record in 1954 with B & E and Larceny. In 1958, he became adjudicated as an adult, and between that time and 1964, he served four H of C sentences and in 1964, was sentenced to MCI Walpole. In 3/65 he was transferred to Forestry, and was paroled in 10/65. He was returned a parole violation 7/66, and was released at end of time in Dec. 1966.

Current Sentence: PE 1-17-75

2-26-68 (eff 9-67) Sentenced & Adm to MCI Walpole;
Charges; A-O all Robbery — Armed Robbery, masked — governing sentence & charge: Accessory before the fact to confining for purpose stealing from bank — 15-30 yrs
3-7-72: Transferred to Monroe
9-26-72; Escape from Monroe
11-10-72; Returned to MCI Walpole (1-19-73 1 yr F&A to be served at Greenfield H of C)
8-73; 1/3 denied

12-13-73; Transferred to MCI Norfolk

Mr. Dussault has been working as a plumber and works for someone who has a driftwood avocation: In 1969, he attained GED at MCI Walpole. He has had no DR's since return from Monroe and at one time, was a member of Inmate council.

The social worker gave her impressions as "certain amount of savvy and social grace" has accepted 20 years of institutionalization . . . long record of stealing . . . takes a conservative look at prisons . . .

Mr. Dussault has not had any furloughs although the committee approved (only by 3/2 vote) the superintendent denied because of closeness of vote.

The subject himself reported that his feeling was denial and close vote prompted by personality clashes with house officers.

Mr. Stolzberger offered a letter of recommendation from Mr. Charles Ristaino, Plumber. (attached) He then again started to present a statement against informant information use — the chairman ruled against the statement by reminding him that his earlier objection had been duly noted. He then made a statement that Mr. Dussault had been a productive member of this society and work is considered a rehabilitative tool — he has worked — and therefore he has fulfilled his responsibility. Statement entered.

Informant information excised

Informant information excised

Reasons for decision:

1. The "reliable sources" were deemed acceptable as reliable because they had produced truthful and verifiable information prior to incidents, which were then avoided and serious harm prevented.
2. Mr. Dussault has not made significant use of program facilities at MCI Norfolk. He has, in effect only been doing time.

To Mr. Dussault & Attorney:

"There is sufficient & significant information that has been made available to the committee that indicates to us that you have placed yourself in a situation at MCI Norfolk so that adequate programming cannot be provided at this time."

Respectfully Submitted,

SELMA K. CHARIF MCIF
Chairman
Roy Belcher, DOC
Charles Soares, MCI Bridgewater

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmates's Name: Robert Dussault
No. N-20427 Report No. 74-268

Offense: (10) Making or having in your possession any type of dangerous weapon

You are hereby notified that you will be seen by the Disciplinary Board officer at the next sitting to be held on ———— at ——— o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY
Disciplinary Officer

Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES

(Attach supplementary sheet if necessary)

After a series of problems within MCI-Norfolk which posed a significant threat to person, property and security, it has been determined through a very reliable source that Robert Dussault was in possession of instruments or materials that might be used as weapons and ammunition and further, that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: ———————————

Officer's recommendation: ———————————

Supervising Officer's comment and review: ———————

Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

———————

8 Nov. 74

To: Whom it May Concern
From: Mr. Charles Ristaino, Plumber, Maintenance #2
Subject: Robert Dussault

Robert Dussault has worked for me in Maintenance #2 (as a plumber) for some nine months. During this time, this man has been a good and dependable worker in all respects. He is competent in his work, and is reliable on the job.

This man has never been a problem of any kind in the shop. Within the scope of my knowledge, he has functioned well in this institution. He has been designated as Tunnel Plumber in recent months, and does a difficult job especially well.

(s) CHARLES RISTAINO
MR. CHARLES RISTAINO
Plumber, Maintenance #2

———————

EXHIBIT 12B

SUMMARY AND RECOMMENDATION OF CLASSIFICATION PROCEEDING

Institution/Facility: MCI Norfolk Date: Nov. 11, 1974

[ ] Inter-Institutional
[ ] Community-Based
[x] Departmental Review Board
[ ] Other (specify) ———————

Resident's Name: Arthur Fano Number: N 21031
age: 38 PE 9-10-82

Recommendation:
Placement: MCI Walpole
Conditions: None

Information to Mr. Fano: We considered the informant information sufficient and serious enough to link you with recent unrest at MCIN. We feel that this involvement would make it impossible for you to pursue a beneficial program at MCIN at this time.

Narrative: Represented by Robert Stolzberger,
Roxbury Defenders Comm.
Session was taped.

Mr. Fano was originally interviewed on 11-6-74. It was continued to 11-8-74 at attorneys request because Mr. Fano was not given 72 hours notice. Continuance granted. On Nov. 8, Mr. Stolzberger again requested continuance because a "witness", Mr. Quirk, CO was unavailable — on vacation to return on Nov. 11. Continuance granted until Monday Nov. 11, at 1 pm When Mr. Stolzberg entered hearing room with Mr. Fano, he again requested a continuance because Mr. Quirk wished to confer with his attorney as regards his presenting testimony. Further continuance was denied. Mr. Soares, member of committee called Mr. Quirk who reported that he did not wish to appear at the hearing. Hearing was openly with introduction of members of committee and prepared statement at

to purpose of Board. Both Mr. Fano and his attorney were advised that Mr. Meachum would be called to present informant information in closed session. Mr. Stolzberger offered a long statement regarding the use of informant information and continued as in all other cases in which he has served as attorney, to harangue regarding the use of intelligence, and again tried to change the focus of the hearing into a disciplinary one. The chairman, finally, requested that Mr. Stolzberger not try to turn the hearing into a D hearing or a judicial proceeding. He stated that he remained "under protest" His final demand was that Mr. Meachums statement he recorded. The request was denied.

Mr. Meachum presented the informant information (see statement attached)

Mr. Stolzberger then present one witness, Mr. William Leonard, Recreational Officer who offered a character reference for Mr. Fano. He stated that Mr. Fano has been an active, fine member of the inmate group working in athletics, always cooperative and helpful.

Mr. Jack Jackson, Unit Social Worker then presented the following information:

Brief History of Criminal Review:

Mr. Fano has an extensive criminal record, including 21 arrests. In 1954, he was committed for first time to Mass DOC (MCIC) In 1957, another committment in MCI Walpole. Charges have been Armed Robbery and Assault w/in to Rob/There have been several committments to H of C.

This committment:

5-4-71; Sent & Adm to MCI Walpole

A.	Manslaughter 18-20 yrs	
B.	Armed Robb(masked)	15-30 yrs CC
C.	Ass/D.W.	3-7 yrs CC
D.	Possess Burg Inst	3-7 CC
E.	B & E	3-5 yrs CC

1-31-73; Tr to MCIN (per order of Comm)
6-17-73; Escape from furlough
6-18-73; Returned from Furlough

General Adjustment:

Mr. Fano appears to have an alcohol problem and has had 2 D reports around booze. He has worked in kitchen, and now works as Number 1 houseman of Unit. He is active in sports, and maintains an avocation — leatherwork. He is also a member of Italo-American Club. He is not in counseling nor in a school program. Mr. Fano feels that he has a skill (cook/chief) and can follow that as a job once returned to street. He needs only to do his time.

The caseworker reports impressions from the house officers that: "Mr. Fano sometimes finds it difficult to control temper . . . is sometimes hard to deal with in that he changes schedules and does not do the job the way the house officer would like it done . . ."

Basis for decision:

1. The inclosed summary of informant information was considered. The sources are considered quite reliable in this case and tend to corroborate each other. In addition, the number of times the subject was named in conjuction with the unrest at Norfolk adds weight in the judgment of this board to the relability of this information.

2. The seriousness of his involvements were considered extreme. The danger posed by weapons and materials used for violence weighs very heavily against remaining in this population. In addition, the type of involvement of this man as an organizer, leader and inforcer was considered detrimental to the institution, and prohibitive to rehabilitative programming at MCI Norfolk at this time.

Respectfully Submitted
Selma K. Charif, Chairman
Dept Class. Review Board

Informant information excised

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: 10-24-74 [ ] Refer to District Attorney
[x] Major [ ] Minor
Inmate's Name: Fano, Arthur
No. 21031 Report No. 74-364
Offense: Possession of Contraband
You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on 10/25/74 at 11 P.M. o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY
Disciplinary Officer

DETAILED ACCOUNT OF THE OFFENSE AND
SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

At approx. 6 P.M. on 24 Oct. in Unit 6-1 I decided to shake down Arthur Fano's room since he was removed from this unit this A.M. and placed in R.B.P.I. This shakedown could not be conducted this morning since subject had his locker keys on his person since this afternoon.

After checking with the officer in charge of 4-12 shift and informing him of my desires to shake Fano's room and securing such permission I proceeded.

Located in an upright footlocker and padlocked I found two one-gallon jars of homemade booze. Upon further search I found two slips of paper which appear to be betting slips which were well hidden under a stack of newspapers.

Reporting Officer's Signature: (s) PAUL D. HULL
Title C.O.

Course of action taken: ———

Officer's recommendation: Discretion of the Board
Supervising Officer's comment and review: ———
Notice delivered by: (s) DANIEL E. REILLY Date:10/25/74

RECORD OF DISCIPLINARY HEARING

Disciplinary Report No.: 74-364 Date: 10-25-74
Inmate's statement: Subject claims they are not betting chips but a football line (ILLEGIBLE). He does admit to possession of homemade booze.
Finding of Board: Guilty on possession of homemade booze.
Action taken by Board: 2 days Isolation

MEMBERS OF THE DISCIPLINARY BOARD

(s) (Illegible)	(s) (Illegible)	(s) (Illegible)
Administrative	Treatment/Social Services	Custodial

Disciplinary Officer

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: 10-24-74 [ ] Refer to District Attorney
[x] Major [ ] Minor
Inmate's Name: Fano, Arthur
No. 21031 Report No. 74-363
Offense: Contraband, home made knife
You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on 10/25/74 at 11 P.M. o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY
Disciplinary Officer

DETAILED ACCOUNT OF THE OFFENSE AND
SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

On Oct. 24, 1974 in Unit 6-1 at around 4:30 P.M. I was searching Arthur Fano's room. Taped to his bed board which was under his mattress, was a homemade knife approx. 10 inches long.

Reporting Officer's Signature: (s) GEORGE R. PALMER
Title H.O.

Course of action taken: Notified OIC and Knife delivered to Copley, ADS

Officer's recommendation: Whatever the Board decides

Supervising Officer's comment and review: ———

Notice delivered by: (s) DANIEL E. REILLY Date:10/25/74

RECORD OF DISCSPLINARY HEARING

Disciplinary Report No.: 74-363 Date: 10-25-74

Inmate's statement:

(ILLEGIBLE)

Finding of Board: Not Guilty

Action taken by Board: Dismissal

MEMBERS OF THE DISCIPLINARY BOARD

(s) (Illegible)	(s) (Illegible)	(s) (Illegible)
Administrative	Treatment/Social Services	Custodial

Disciplinary Officer

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: 10-25-74

[x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Arthur Fano
No. N21031 Report No. 74-366

Offense: Using threatening or any other improper language toward any other inmate.
Passing or receiving contraband from other inmates.

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on ——— at ——— o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY
Disciplinary Officer

Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND
SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI Norfolk which posed a significant threat to person, property and security, it has been determined through a reliable source that Arthur Fano used threatening language toward other inmates, and that he possessed certain instruments that might be used as weapons, and further that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title Supt.

Course of action taken: ———

Officer's recommendation: ———

Supervising Officer's comment and review: ———

Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 12C

SUMMARY AND RECOMMENDATION
OF CLASSIFICATION PROCEEDING

Institution/Facility: MCI Norfolk Date: Nov. 13, 1974

[ ] Inter-Institutional

[ ] Community-Based
[x] Departmental Review Board
[ ] Other (specify) ———————

Resident's Name: Richard McPherson Number: N21608
PE: 9/16/77

Recommendation:
Placement: MCI Walpole
Conditions: None

Narrative: Mrs. Linda Olmstead, Attorney, Roxbury Defenders Comm. standing in for Attorney Alan Kaplan.
Hearing was taped.

The hearing was opened with a statement made by Mrs. Olmstead that "the hearing is illegal, based on an improven charge made by sources unavailable to client of attorney". Also stated "Therefore Mr. MacPhearson had been advised by Mr. Kaplan not to participate in the hearings".

The chairman advised Mr. MacPhearson that inasmuch as sufficient and proper notification had occurred, the hearing would be held, and that Mr. MacPherson might remain to listen and/or present any information which he wished. Mr. MacPhearson agreed to remain.

Introductions were then made and the prepared statement read. There being no further questions as to procedure thus far, Mr. MacPhearson and Mrs. Olmstead were excused, and Mr. Meachum entered to make his statement in closed session.

In addition to the prepared statement, Mr. Meachum reported that Mr. MacPhearson had been one of the men transferred following the July difficulties. Upon his return following a court hearing, he embarked on a angry vendetta, maintaining a reign of fear in the unit. (Statement enclosed)

When the hearing was resumed, Mr. Tom Connolly, Unit Social Worker presented the following information:

5-21-73 Sentenced and Admitted to MCI WALPOLE (first incarceration)
5-25-73 Transferred to MCI BRIDGEWATER STATE HOSPITAL (30 days observation)
7-17-73 Returned to MCI WALPOLE
1-30-74 Transferred to MCI NORFOLK
7-24-74 Transferred to MCI WALPOLE
9-26-74 Transferred to MCI NORFOLK

General Adjustment:

Mr. MacPhearson has consistently presented himself as a hostile, angry, young man and has a large number of D reports to prove it. These reports concern themselves primarily with disobedience, and disrespect.

Mr. MacPhearson has been a drug abuser for a long while, and prior to his commitment to MCI WALPOLE had been a patient at a VA hospital for drug abuse. Although he reports that he became a drug addict as a result of medication following 3 shrapnel wounds sustained in Vietnam, this information has not been corroborated. There is no evidence (in record) that he was wounded (he is not receiving disability) or that he was honorably discharged. (as he claims) Mr. MacPhearson told the committee (by accident) that while in the hospital, he had attacked the psychiatrist with a fork.

He has had no furloughs.

Informant information excised

Informant information excised

Basis for Recommendation:

1. Informant Information was judged sufficient in detail and reliability to be weighed seriously in the

boards decision making. The information regarding the subject's attitude and motivation seemed adequatedly supported by the man's record and his attitude before the board. (He stated he had never received fair treatment at classification). The reliability of the information was judged as quite reliable in that it came from three sources. When asked, Mr. Meachum provided details of the course of events on the night of Oct. 13th which substantiated in general terms the informant information presented (see attached letter)

2. The sources themselves were considered reliable, especially in cases of sources C and D. (see attached statement concerning reliability of sources).

(s) Selma K. Charif
Chairman

June 21, 1974

Incident Report

To: Deputy Superintendent
From: C. O. William M. Murphy
Ref: Inmate Richard McPherson

While sitting as Chairman of the Furlough Board this afternoon inmate Richard McPherson came before the Board for a quarterly furlough. He had had a recent lock-up and it was an easy decision to turn him down. When told of our decision he flew into a fit of temper, refused to sign to form, and stormed out of the room. This man is not the Norfolk type inmate. He is hot tempered, violent, and doesn't seem to show good reason.

(s) William M. Murphy
William M. Murphy

[*Two illegible pages dealing with McPherson Disciplinary Report*]

Massachusetts Correctional Institution Norfolk
Disciplinary Report

Date: May 4, 1974 [ ] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Richard McPherson
No. N-21608 Report No. 74-108

Offense: Out of Bounds; Failure to obey an Officer; Disrespect to an Officer.

You are hereby notified that you will be seen by the Disciplinary Board Officer at the next sitting to be held on May 6, 1974 at 3:00 P.M. o'clock concerning the following Disciplinary Report.

(s) J. E. Murphy
Disciplinary Officer

Detailed Account of the Offense and Surrounding Circumstances
(Attach supplementary sheet if necessary)

On Saturday, May 4, 1974, at 3:50 PM, Richard McPherson walked into Unit 2-1 with another inmate. McPherson was loud and he confronted Fisher Boyd, who is a black inmate, saying how he would like to "Club a Fucking Nigger". Boyd ignored him and walked upstairs. McPherson followed him up the stairs and had a few more words with him. I went up and told McPherson to get back downstairs. He did so and I went back to my office. McPherson then came to my office and asked if he could go upstairs and I said no. He then looked at the inmate accompanying him and said "Fuck him", and went upstairs anyway. I then went up for the second time and told McPherson to leave. He did leave, but only after inmate Robert O'Brien coaxed him into it. I then called the O. I. C. and had McPherson put in Unit A-A.

Reporting Officer's Signature: (s) Paul St. Laurent
Title D.O., Unit 2-1

Course of action taken: (ILLEGIBLE) Unit A-A
Officer's recommendation: Isolation time and have this man banned from Unit 2-d
Supervising Officer's comment and review: ————————
Notice delivered by: (s) Robert A. McCarthy Date: 5-5-74

RECORD OF DISCIPLINARY HEARING

Disciplinary Report No. 74-108 Date 5/11/74

Inmate's Statement:

McPherson (Illegible in record) bumped into each other and a heated exchange developed and he admitted to following Boyd upstairs to continue the argument (Illegible) admits to being out of bounds and disobeying the officer but was unaware of the remarks he made to both Boyd and the officer during the heat of argument.

Finding of Board: Guilty
Action taken by Board: 3 days isolation

Members of the Disciplinary Board

(s) (Illegible) Administrative
(s) (Illegible) Treatment/Social Services
(s) (Illegible) Custodial

———————————
Disciplinary Officer

5/10/74 Att. Kaplan acting as counsel

Massachusetts Correctional Institution, Norfolk
Classification Program Review Sheet

Date: 7-31-74

Name Richard J. McPherson Number N-21608
Unit Social Worker Santiago Leen

Chronology
??-21-73 (ED 5-17-73) Sent. & Com. MCI-W
Armed Rob. Masked 5-7, Armed Rob. 5-7 cc.
??-25-73 Trans. SSH - obs.
??-17-73 Ret. MCI-W
??-30-74 Trans. MCI-N
??-24-74 Trans. MCI-W.

Status: PE 9-16-76
1/3 1-16-75
COV. OFF.
Armed Rob.
Masked 5-7
WARR. None
S.D.P. N/A

Furlough Program None
Disciplinary Reports 2-15-74—Disturbance in quarters—warning. 5-4-74—out of bounds; failure to obey; disrespect—3 days isol.
Classification Program physical; constr. job; couns; music; education
Institutional Activities & Evaluation
(Program Changes)

Richard McPherson was born on December 8, 1949 in Medford, Mass. The eleventh ——— of 13 children (15 were born, but two died). His parents were apparently in their forties when he was born. He left school in the 9th grade, when he turned 16. His grades and conduct were poor, but he got along well with other students and he showed ability in music. In the ——— grade he received some individualized treatment and responded well, fixing appliances in ——— class.

From the time he left school until he joined the army in 1969, Mr. McPherson's work history is not on record.

From 1969 to 1971 Mr. McPherson served in the army in Vietnam. He returned with ——— decorations, shrapnel lodged in his head, and a heroin habit. For a couple of months he apparently worked in the Somerville Highway Department. In the fall of 1972 he sought help for his drug problem at the V.A. Clinic in Boston, and from Nov. 23,

1972 to February 5, 1973 he was a resident in the Bedford V.A. Hospital Drug Program.

Mr. McPherson's criminal record begins in 1968 with an assault and battery on a police officer (for which he paid a fine). Also in 1968 he was fined for driving under the influence of alcohol. In 1969 he was found guilty of being present where a narcotic drug was found (6 mo. H.C., 1 yr. prob.). In 1969, 70, and 72 he was arrested for drunkenness, and in 72 he was convicted of B&E but the sentence was filed.

Shortly after he entered MCI-Walpole Mr. McPherson was sent to Bridgewater State Hospital for observation, on admission they found him depressed, and paranoid. He was apparently withdrawing from drugs at the time. On discharge he was found to be detoxified and suffering from a personality pattern disturbance.

REVIEW DATE:
2 MARCH 74

IMPRESSIONS
Mr. McPherson spoke with apparent pride to a social worker in the past of his involvement in barroom fights. His present social worker has found him generally negative in outlook. The RDC evaluation points to the fact that Mr. McPherson seemed to do better when he feels he is being treated as an individual. It is evident that he has a serious drug problem, and he does not appear to have found the positive involvements that would help him to overcome it.

MASSACHUSETTS CORRECTIONAL INSTITUTION, NORFOLK
CLASSIFICATION PROGRAM REVIEW SHEET

Date: 8-6-74

NAME Richard J. McPherson NUMBER N-21608
UNIT SOCIAL WORKER Santiago Leen

CHRONOLOGY

STATUS: PE
1/3
COV. OFF.

WARR.
S.D.P.

SUPPLEMENTARY CLASSIFICATION PROGRAM

FURLOUGH PROGRAM
DICIPLINARY REPORTS
CLASSIFICATION PROGRAM
INSTITUTIONAL ACTIVITIES & EVALUATION
(Program Changes)

This report was written after the hearing and recommendation by the classification board August 2. It is based on an interview with Mr. McPherson at MCI–Walpole, the incident reports relied on in the decision of the classification board, and conversation with Mr. McPherson's senior house officer. Due to time pressures, it was impossible to incorporate these materials in the earlier classification review.

In substance the incident reports allege the following:

1. C.O. Edward Riendeau alleges that on an unspecified date during the disturbances, at about 9:45 PM, he observed Richard McPherson to be one of 25 to 35 inmates, most of them armed with bats or pipes, who ran from unit 7-3 to

unit 7-1 and engaged in heated discussion. He states that he specifically noticed that Mr. McPherson was carrying what appeared to be a bat.

2. C.O. William M. Murphy alleges that on June 21, 1974, (a date prior to the disturbances) he observed Richard McPherson fly into a fit of temper and stomp out of the room without signing the furlough form after being denied a furlough. He also makes negative observations of his general behavior.

3. C.O. R. Palmer alleges negative behavior by Mr. McPherson over several months, including suspected use of marihuana, and recites a specific incident (of unspecified date) [illegible] but apparently the same incident as described by C.O. Riendeau) in which Mr. McPherson allegedly led a group of inmates from 7-3 to 7-2 after curfew.

4. C.O. George Grigas alleges that on 7-21-74 in unit 7-3 he obesrved Mr. McPherson in an uncontrolled emotional state, and heard him say "They ought to kill the screws" and other statements aimed at no one in particular.

[illegible]
ing across the quad (lawn), improper dress, and "defiance to major counts". (He also makes a negative assessment of Mr. McPherson's general behavior.

In conversation with Mr. McPherson, he brought out the following information.

Mr. McPherson has had a problem with his temper as long as he can remember. Even when he was a small child he became extremely angry with his younger siblings. This predilection to become angry does not appear to be casually linked to intoxication or the use of drugs, nor does it seem to be strongly associated with assaultative behavior, nonetheless it is some indication of Mr. McPherson's persistent underlying negative feelings.

Mr. McPherson worked during the years 1965 to 1969 at Ames Color-file in Somerville (21 Properzi Way, 775-1142)

as a press operator. He left the job when he joined the marines, then returned to it after his service. He left to take a higher paying job doing road work for the city of Somerville.

Mr. McPherson is and has been since his school days deeply involved in music. He has played guitar and saxaphone in bands, and he also plays harmonica, flute and clarinet at performance level. He reads and writes music. At Norfolk, he has done most of his playing by himself, but has played in some groups.

Just prior to his enlistment in the Marines, Mr. McPherson was living with one of his brothers. They were involved together in fixing and racing motorcycles. Mr. McPherson joined the Marines shortly after this brother died. Mr. McPherson had another brother who is a career military man, which may have influenced his decision to enlist in the Marines. He also remembers having felt a desire to prove himself.

Mr. McPherson's drug habit developed in a way common among combat-wounded veterans: He was on morphine while in the hospital recovering; then the hospital staff put him on Demerol. After his discharge he switched to heroin.

When he realized he had a problem, Mr. McPherson went first to the Water Street V.A. clinic. As he described it, he was extremely troubled at the time. They referred him to the Jamaica Plain V.A. Hospital, but they did not feel able to handle him, so they sent him to a locked ward at the Bedford V.A. Hospital. He went from there to the center for attitude change at Boston State Hospital, but did not adjust well, and returned to Bedford. He went from there to court. Mr. McPherson feels he got a lot out of 1-1 counseling at Water St. and group therapy at Bedford. He got less out of the other programs.

Almost as soon as he arrived at Walpole, Mr. McPherson was transferred to the Bridgewater State Hospital for

observation. (See the Hospital reports in source folder). Mr. McPherson speaks with some feeling of the human waste he saw there.

While at Norfolk Mr. McPherson has been a full-time student most of the time. From January to June, he studied advanced English. In June he began courses in Mythology and Social Deviance (which he did not finish due to his removal from Norfolk). He attended AA about 70% of the time, and played on their softball team. He received few visits. He has a girlfriend, and has corresponded with her, but he asked her not to visit, as he did not want to go through the unhappiness caused by her departure. He has participated extensively in the sports program.

At Walpole, Mr. McPherson appears to have made an adequate adjustment to Block 10. He has been doing some playing, which he says drives his neighbors crazy, and he has a neighbor, a well-known informer, whose constant typing drives Mr. McPherson crazy. He says that when he wakes up each morning he can't quite believe he is in Walpole. Thanks to the intercession of Mr. McPherson's and the action of Supt. Waitkevich, Mr. McPherson's girlfriend has been placed on the visiting list.

In the future, Mr. McPherson would like to be a full-time professional musician.

July 23, 1974

To Mr. Meachum

At approx. 9:45 p.m. in Unit 7-3 I was waiting for inmates L. Sirocci, G. Racca, C. Dempsey, L. Hurney, to return from the Medfield Hosp. prison program.

I was standing on the inside of the front door in Unit 7-3 when I saw several officers leave the C.I.C. and walk towards Unit 7-1. Also inmate William Myers saw the same thing as I observed. At this point I step out of the

unit and observed a good size group of inmates standing in front of 7-1.

Several inmates left my unit and started towards Unit 7-1. One of these inmates was William Myers reached the group in front of Unit 7-1 and then started running back to Unit 7-3 shouting "There trying to get the 7-3 guys. He ran up the stairs in Unit 7-3 then 25 to 35 inmates came running out off Unit 7-3 most were armed with bats and pipes.

They all ran down to Unit 7-1 and there appeared to be some heated discussion from my vantage point. After a few moments they started to return to Unit 7-3.

Among those who I saw carrying weapons were Steven Doherty appeared to be carrying a 3 foot pipe. William Myers was armed with a 3 foot wooden stud. Richard McPherson was carrying what appeared to be a bat. Leo Hurney was making statements such as quote (Lets go back and get those guys again) Inmate Hurney appeared very [illegible] at this point and he also was carrying a wooden stud. They all return to the Unit 7-3 and I blew the whistle and called the C.I.C. that I was going to try and lock the inmates up for the 10 pm count.

There was no problem during the lock up and I called my count in 48 inmates and then lock the front door and started for the Gatehouse.

This entire incident lasted approx. 4-6 minutes.

(s) Edward Quinlan

EXHIBIT 12D

Of Classification Proceeding

Institution/Facility: MCI–Norfolk Date: 11/13/74

[ ] Inter-Institutional

[ ] Community-Based

[x] Departmental Review Board

Resident's Name: Richard De Brosky Number: N-19566
Age 30 PE 2/23/85
1/3 2/77

Recommendation:
Placement: MCI – B
Conditions: 90 day review—
School for GED: Counselling AA

Narrative: Mrs. Susan Thal, Law student with Roxbury Defenders Comm.
Hearing was not taped.

The hearing was opened with an introduction of Board members and the reading of a prepared statement as to the purpose of the Board. Ms. Thal asked "inasmuch as the charge that is stated in the notice of hearing reflects a disciplinary charge, how can the hearing take place?" Mr. Belcher, Board member replied that this Board is not interested in guilt or innocence, however, there will be informant informant presented by Mr. Meachum that will be evaluated, considered for reliability along other classification material presented. The Board Chairman further explained that both Mr. De Brosky and Ms. Thal may add any information that is relevant to a classification process. Ms. Thal and Mr. De Brosky were then excused and Mr. Meachum presented his informant information and a revue of the reliability of the sources in closed session. (Found in the final summary of this report.) Important to note that Mr. Meachum was questioned in great detail re: the specific information which the sources had supplied.

When Mr. De Brosky and Mrs. Thal returned, Ms. Briana Murphy, unit social worker presented the following information.

Brief review of criminal history

Subject has a history of (19) court appearances. First arrested at age 8 for breaking and entering (night). He

received a Youth Service Board suspended sentence and probation for 4 months filed. Subsequent arrests have included the following offenses:

Juvenile:
Larceny
Using without authority:

Adult:
Permitting operation of uninsured m/v
Permitting unreg. m/v to be operated
Illeg. attached plated
Drunk (8)
Dist. the peace
Oper. under influence
Rec. stolen property (2)
B&E (nt) w/int. Felony
Attempted breaking safe
Oper. after lic. susp.
Oper. w/o lic.
Using w/o auth.
Poss. burg. impl. (2)
Consp. B&E & L. (nt)
Larc. false pretence

Dispositions included the following commitments:
Youth Service Board and House of Correction (4)

2/24/70 Sentenced and admitted to MCI-Walpole

Charge:

a.	B&E nt & Larc.	3-5	Forthwith
b.	Put in fear for purpose of stealing	21-30	Fr. & aft. sent. being served.
c.	Armed Robbery (masked)	21-30	Conc. w/above
d.	Unarmed Robbery		
e.	A & B – D.W.	8-10	Conc. W/b

General adjustment

Richard De Brosky is serving a serious sentence, 24-35 yrs, It is his first state prison sentence and he appears to be taking it seriously. Although he is working hard to get his conviction overturned, Mr. DeBrosky is also building a record for his 1/3 consideration which will be coming up in 1977.

Mr. De Brosky's central activity was the paint crew. He had been a member of it during most of the time since he came to this institution and he had risen to a more or less supervisory level. His supervisor, John Magro, said he did a good job. For the past 2½ months, Mr. DeBrosky has worked as Visiting Room Host and Visitor's Photographer and goes to school remainder of tiem. School 8 A.M.-12 Noon. Visiting Room 12:30-3:30 6-8 PM He continued to work for GED.

In addition to his work assignment, Mr. DeBrosky ahe participated in a wide range of activities at Norfolk. For almost two years, he has been recording for the blind; he participated in Alcoholics Anonymous for about a year, and is presently enrolled in the counselling program which he has participated in regularly for about eighteen months.

Mr. DeBrosky is quite an athlete, being on the first teams in softball and football. He also has a moderately profitable woodwork avocation. Another important aspect of Mr. De Brosky's life seems to be his family ties. Although he was divorced from his wife in 1966, he retains strong interest in his son. His mother takes the bus from Haverhill to visit him once a month.

He has had no disciplinary reports and has completed 10 furloughs successfully.

When confronted during with facts of situation at MCI-N fires, contraband, weapons—he stated that he has worked too hard for 1/3 to jeopardize it now. He also claims no

close associations with other people in R.B.—or anyone else at MCI-N.

Attorney requested that if a transfer were indicated, to consider MCI,C

Mr. Meachum's Statement:

Source B—

1 Inmate identified materials and plans designed for use in an escape attempt. These involved the possible overthrow of the institution, Materials (ie: keys picks, homemade shotgun, and instructions for making a bomb) were found and an inmate was later charged and returned to Walpole.
2. He identified a major inmate drug dealer, which led us to find a large cache of drugs and over-supply of cigarettes. The inmate dealer is currecntly under idictment and has been returned to Walpole.
3. He informed us that inmate was receiving drugs in tape cassetted. We confiscated the tapes when they arrived in the mail, and found pills and heroin

Source D—

1. Other information has been validated by supporting information in regard to the current hearings.
2. He told us a unit had been prepared to be burned. We examined the rafters and found that they had recently been treated with a flammable compound. We prevented this fire.

Basis for Recommendation:

Summary of Informant Information and Conclusions:

Informant Information Excised

———

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK
DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Richard Dubrosky
No. 19566 Report No. 74-372

Offense: (10) Making or having in your Possession any type of dangerous weapon

You are hereby notified that you will be seen by the Disciplinary Board/Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY *A.D.S.*
Disciplinary Officer

Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES
(Attach supplementary sheet if necessary)

After a series of problems within MCI-Norfolk which posed a significant threat to person, property and security, it has been determined through a very reliable source that Richard Dubrosky Debrosky was in possession of instruments or materials that might be used as weapons and ammunition and further, that he had joined in plans to use these items of contraband.

Reporting Officer's Signature: (s) LARRY R. MEACHUM

Title: Supt.

Course of action taken: _____
Officer's Recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

EXHIBIT 12E

Institution/Facility: MCI Norfolk Date: Nov. 8, 1974
[ ] Inter-Institutional
[ ] Community-Based
[x] Departmental Review Board
[ ] Other (specify _____

Resident's Name: David Hathaway Number: N-21288
age: 33 PE 12-27-82

Recommendation:
Placement: MCI Bridgewater
Conditions: None

Narrative: Mr. Robert Stolzberger, Atty
Roxbury Defenders' Committee
Interview was taped

The order of the hearing was a general overview of the proceedings opening with an introduction of members of the committee and prepared statement as to the purpose of the hearing. Mr. Hathaway and his attorney were then advised that Mr. Larry Meachum, Supt. of MCI Norfolk would be called to present information in closed session. Mr. Stolzberger presented a formal objection to the presentation of such material, and also to the entire process of a review based on information that is not public or available to the attorney. The chairman noted Mr. Stolzberger's objection and again reminded the attorney that the hearing was neither a judicial nor an adversary proceeding. Mr. Stolzberger then stated for the benefit of the recording, that he was continuing "under protest" duly noted.

They were excused and Mr. Meachum entered to present his information and discussion as to reliability to sources (Presented elsewhere in this report) When presentation was finished he left.

Upon re-entering, the attorney again attempted to turn

hearing into D Board or judicial hearing and had to be stopped and reprimanded by the chairman. Throughout the hearing this occurred several times.

The unit Social Worker then presented the social and criminal history as presented below:

BRIEF REVIEW OF CRIMINAL HISTORY:

Extensive criminal history dating back to juvenile incarceration. First adult history in 1956 with N.C. sentences. First commitment to MCI Norfolk in 1964. All charges appear to be of violent nature (Armed Robbery, Assault D.W.) During 1970-71 when released he went to California, where again he became involved in illegal activities and spent time in prison there, San Quentin. When released on parole, he left the state to come to Mass.

11-28-72—Committed to MCI Walpole.

Charges: A—D Armed Robbery
16-25 yrs. (gov. sent.)
E—Armed Assault with intent to murder
15-20 yrs.

5-18-73; Transferred to MCI Norfolk
5-22-73; Transferred to MCI Walpole
8-21-73; Transferred to MCI Norfolk thru Classification Board
PE 12-27-82

GENERAL ADJUSTMENT:

Mr. Hathoway is current serving his second period of incarceration here at MCI:N. He was here between 1964 and 1967 when, at the beginning he had periods of despair and depression, culminating in an attempt to commit suicide which resulted in a period of 35 days observation at MCI:B. But that was many years ago. In 1967 he wrapped up his sentence, got married and had a daughter. In 1969 becoming disillusioned with married life, he left Mass. to travel to California where he eventually met up with his uncle

and they eventually got into further trouble and served time at San Quentin. He was paroled in 1971, but broke parole to return to Mass. to be near his girl friend and her mother.

The weight of the Ca. escape Warrant, plus associating with friends of dubious value, led Mr. Hathoway into present circumstances culminating in a dramatic shootout with the local police, hence his admittance to our hospital from the New Bedford jail for bullet wounds.

The reason for this background material is to tie together some of the operating factors in Mr. Hathoway's situation. He was an orphan and his adoptive parents were alcoholic and abusive. At fourteen, his father off-handedly told him he was not his real son, but was adopted which upset Mr. Hathoway greatly.

What is operating now is that at long last he feels that he has found as he puts it "the family I've never had" with his close attachment to his girl friend and her mother. Mr. Hathaway would like to someday marry her and she seems very willing to wait, according to Mr. Hathoway.

Here at MCI:N Mr. Hathoway is absolutely no problem as compared to prior street behavior. Currently, he is the Housman in his unit, has a laundry avocation, plays football and softball, and is the unit representative. He is interested in group therapy and has submitted his name to DLM.

During the interview Mr. Hathoway was very candid and honest. He is considered very reliable and trustworthy in the unit. He exhibits self insight and understanding into his reality situation and his feelings about it.

In sum, Mr. Hathoway appears to be sincere and honest and is doing his time in a constructive manner. He is dealing with the obvious contrast of his street behavior with his institutional behavior and is making progress.

No Disciplinary Reports.

Mr. Hathoway has had no furloughs approved. He had

had one furlough approved for August 74 but informant information indicated that he was planning to escape to Canada with girl friend. This information came to the Supt. from a source within the institution and another outside of the institution. Furlough was cancelled.

The unit Social Worker offered the observation "that Mr. Hathoway had been unit Rep and acted responsibly in many cases. However, he added, he does travel all over the camp with his Laundry Avocation and speaks to many people. Some believe (staff) that Hathoway is quiet into camp politics and could be more involved into things than what are on the surface."

Informant Information Excised

Basis for Decision:

1. When Mr. Hathoway was questioned during interview re: the charges expressed on notice of Classification hearing "serious fires occurring with MCI Norfolk . . . .", he immediately went into long discussion of two specific fires denying his quiet— Although he was not privy to informant information, and could not have known specifics that these were the two mentioned in the charges. The more he talked, the more he appeared involved.

2. The "reliable sources" were deemed acceptable as reliable because they had produced truthful information prior to incidents that were then avoided and serious harm prevented.

3. Mr. Hathoway, other than avocation has not made sufficiently of available programs at MCI Norfolk that might benefit him.

Decesion as Presented to Mr. Hathoway:

This committee feels that you should be removed from this environment and associates and the current situation

at MCI Norfolk. Because of this, the recommendation will be to MCI Bridgewater. There are programs, such as AA which will be available to you. There is also a new avocational center in which you can become active. It is a Medium Security institution, and this committee has tried to listen when you've said "Trust me"—Give me a chance . . ."

Mr. Stolzberger requested that his client be allowed to return to population to empty room and sell Avo equipment. Denied.

A counter suggestion was made that he work with Mr. Jackson, social worker to accomplish these ends. Mr. Hathoway accepted.

Respectfully Submitted,
(s) Selma K. Charif
Selma K. Charif MCIF
Chairman
Roy Belcher, DOC
Charles Soares, MCIB

Disciplinary Report

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor
Inmate's Name: David Hathaway
No. N-20664 Report No. 74-37
Offense: (1) Willfully disfiguring or damaging any part of the institution.
You are hereby notified that you will be seen by the Disciplinary Board/Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. Murphy *A.D.S.*
Disciplinary Officer
Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES

(Attach supplementary sheet if necessary)

After a series of serious fires within MCI Norfolk which caused considerable property damage and posed a very real threat to personal safety, it has been determined through reliable sources that David Hathaway has been significantly involved in the planning and execution of one or more of these fires.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title: Supt.

Course of action taken: _____
Officer's Recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. Ross Date: 10/25/74

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8 Nov 74

To: Whom it May Concern
From: Mr. Charles Ristaino, Plumber, Maintenance #2
Subject: David Hathaway

David Hathaway was employed by me as a Maintenance Plumber for several months. Although he no longer is so employed, I can say he is a stable, quiet inmate in all respects.

While employed in this shop, he was competent and dependable in all ways, and never had any problems associated with his work. David has gotten along well in the camp, and I would be happy to have him again employed here.

(s) CHARLES RISTAINO
Mr. Charles Ristaino
Plumber, Maintenance #2

EXHIBIT 12F

SUMMARY AND RECOMMENDATION OF CLASSIFICATION PROCEEDING

Date: Nov 6, 1974

Institution/Facility: MCI Norfolk
[ ] Inter-Institutional
[ ] Community-Based
[x] Departmental Review Board
[ ] Other (specify _____

Resident's Name: Charles Royce Number: 6 21546
age: 31 PE 1-21-79

Recommendation:
Placement: MCI:N (RB)
Conditions: 30 day review

That Commissioner recommend to Supt. Meachum to place Mr. Royce in RB in Administrative Segregation to be reviewed in 30 days. During this period.

1. Have Mr. Royce examined by psychiatrist with written report prepared for 30 day review.
2. Allow Mrs. P. Lowenstein, DLM, continued to see Mr. Royce in counseling session during period of segregation:
3. Instruct Jack Jackson, Unit Social Worker to confer with Mr. Royce on a regular basis in order to keep him to establish goals & plan for his own rehabilitation program, to be presented at 30 day review:

Narrative: Attorney Ms. Linda Olmstead,
Roxbury Defenders
Session was recorded on tape.

I. Reason for Referral:

Attached: Notice of Classification hearing and two additional D reports

II. Brief Summary of Criminal History:

Mr. Royce has extensive criminal history dating back to age 12. All cases were against property rather than person. He has also served sentences in California and there are two (2) outstanding warrants being held against him:

1. Parole Violation
2. Arrest for P.V.

III. Review of History in Dept. of Corr.

6-26-73; Sent & Admitted to MCI Walpole.
Charges: Armed Robbery 9-20 yrs
Unlawf. carring firearm 2½-3 yrs CC
9-14-73; To RDC
12-6-73; To MCIN

IV. General Adjustment:

Unit Social Worker, Jack Jackson, reported that he has done "all right" but appears to have mood swings. Recently had been depressed but appeared to be coming out of his depression. Mr. Royce has been in counseling for about one year with Mrs. Lowenstien and he feels that has been of great help. He saw the psychiatrist who noted that there are unresolved areas between his depression and elation and that he seems to be working on them with the therapist. He also recommended small dosages of Valuim. Mr. Jackson also stated that he believes that Mr. Royce is honestly trying to disengage himself from the political framework of prison life and the tenuous hold which his brothers, both incarcerated at MCIN, have on him. (Brothers; William, Thomas) Mr. Royce has been working in the Visiting Room as host. He has had 2 prior work placements but was fired from each.

(Mrs. Olmstead, attorney, asked permission to him Mr. Thomas Dresner, Supervising CO and Visiting Room Supervision, offer character reference for Mr. Royce. It was allowed and Mr. Dresner spoke highly of Mr. Royce's work, attitude nad interest)

Mr. Royce has attained his GED certificate, is active in poetry group and maintains a Woodworking avocation.

He has had no furloughs approved.

V. Basis for Recommendation:

1. Informant information was presented by Mr. Larry Meachum, Supt of MCI Norfolk, prior to the hearing. Although several sources contributed to the presenting information, the committee felt that the sources had not been proved reliable enough to become a decisive, factor indicating transfer. Both Mr. Meachums report & Source reliability report to follow elsewhere in this report.
2. Although Mr. Royce had an additional disciplinary report (see D reports 2-3) It was felt by the committee to be of serious emotional instability rather than resorting to earlier behavior of absolute violence.
3. Mr. Royce appears to be making an effort to get himself together with help. His good relationship with Mrs. Lowenstein and Mr. Jackson has been supportive of these efforts. His indicated interest in poetry, avocation, and school would also reaffirm his intent for self improvement.

Informant information excised.

DISCIPLINARY REPORT

Date: Oct. 25, 1974 [x] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Charles Royce
No. N-21546 Report No. 74-370

Offense: (16) Passing or Receiving Contraband from other inmates or visitors
(26) Possession of Narcotics, barbiturates and/or amphetamines

You are hereby notified that you will be seen by the Disciplinary Board/Officer at the next sitting to be held on _____ at ____ o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY *A.D.S.*
Disciplinary Officer

Case referred to Dist. Attorney for investigation

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES

(Attach supplementary sheet if necessary)

After a series of problems within MCI-Norfolk which posed a significant threat to person, property, and security, it has been determined through a very reliable source that Charles Royce was involved in the trafficing of Contraband in the institution.

Reporting Officer's Signature: (s) LARRY R. MEACHUM
Title: Supt.

Course of action taken: _____
Officer's Recommendation: _____
Supervising Officer's comment and review: _____
Notice delivered by: (s) GEORGE N. ROSS Date: 10/25/74

Pending as of 11-6-74

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK

DISCIPLINARY REPORT

Date: October 31, 1974 [ ] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Charles ROYCE
No. N-21546 Report No. 74-394

Offense: Disrespect to a Correction Officer

You are hereby notified that you will be seen by the Disciplinary Board/Officer at the next sitting to be held on 11/1/74 at 1:30 p.m. o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY *A.D.S.*
Disciplinary Officer

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES

(Attach supplementary sheet if necessary)

On October 31, 1974, at approximately 7:30 p.m., on the second floor of the Ad. Building. Inmate Charles ROYCE, while being escorted to the hospital for medical treatment (for NO apparent reason), called me a "MOTHER FUCKER". His exact words were, "YOU MOTHER FUCKER". This was said while he was looking directly at me.

Officer Hank LaVALLE who was escorting ROYCE, definitely heard this and will verify if necessary.

Reporting Officer's signature: (s) (Illegible) Title: SCO
Court of Action taken: This incident was reported to the OIC
Officer's recommendation: Reclassification
Supervising Officer's comment and review: _____
Notice delivered by: (s) C.O. PAUL ST. LAURENT
Date: 11-1-74

Pending as of 11-6-74

MASSACHUSETTS CORRECTIONAL INSTITUTION NORFOLK

DISCIPLINARY REPORT

Date: 10/31/74 [ ] Refer to District Attorney
[x] Major [ ] Minor

Inmate's Name: Royce, Charles
No. 21546 Report No. 74-393

Offense: Destroying State Property

You are hereby notified that you will be seen by the Disciplinary Board/Officer at the next sitting to be held on Nov. 1, 1974 at 1:30 p.m. o'clock concerning the following Disciplinary Report.

(s) J. E. MURPHY *A.D.S.*
Disciplinary Officer

DETAILED ACCOUNT OF THE OFFENSE AND SURROUNDING CIRCUMSTANCES

(Attach supplementary sheet if necessary)

At 6:45 pm in the Receiving Building on 10/31/74 Royce, Charles proceeded to break 14 windows out, the window in his door, and the toilet bowl.

The reason of this outburst was that he was informed that he was not receiving a visit as he had had eight (8) visits already this week.

In the course of breaking up his cell #20 on the 3rd floor of the Recieving Building Royce cut himself and was taken to the Hospital for treatment of lasceration of Left Thumb.

At 8:50 pm Royce was returned to Recieving Building.

Reporting Officer's signature (s) EDWIN F. CHRISTIANSEN
Title S.C.O.

Course of action taken: O.I.C., & G.H. & Hosp. Notified

Officer's recommendation: To be transferred to another institute as he is NOT Norfolk type of resident.

Supervising Officer's comment and review:_____

Notice delivered by: (s) C.O. PAUL ST. LAURENT
Date: 11-1-74

DEFENDANT'S EXHIBIT A

MASSACHUSETTS DEPARTMENT OF CORRECTION
Commissioner's Bulletin 72-1
Effective June 5, 1972

DISCIPLINARY POLICY

PURPOSE:

The disciplinary process is one of the most important elements of the correctional system because it affects the very lives, well-being, and attitudes of both residents and staff. These rules are promulgated in the belief that a speedy and fair adjudication of alleged wrong-doing coupled with meaningful sanctions contributes to the maintenance of security and the rehabilitation of the resident. This policy has been drafted after extensive consultation with the staff and residents at each Massachusetts Correctional Institution. Each superintendent will draft rules and regulations for the implementation of this policy. Once implemented the policy will be reviewed and may be revised at the end of a two month test period.

OVERALL SYSTEM:

These rules establish a hearing examiner system for minor violations where a trained impartial individual (designated as the disciplinary officer) investigates the circumstances, makes a finding of fact, and recommends a sanction(s) where appropriate within 24 hours of the alleged violation. If the finding is adverse to the resident, he will have the option of accepting the finding and sanction, or of

appealing the finding and/or sanction to a three man disciplinary board. Major violations will be certified to the disciplinary board for a formal hearing where the resident may have the benefit of representation, confrontation, and cross-examination. The action of the board may be appealed to the superintendent and certain sanctions may be appealed to the Commissioner of Correction.

The rules and regulations encompass both the following bold-faced type and the lower case narrative.

Approved by Alfred C. Holland
State Purchasing Agent,
Publication No. 6165

I. Appointments

A. THE DISCIPLINARY OFFICER FOR EACH INSTITUTION SHALL BE DESIGNATED BY THE SUPERINTENDENT.

The disciplinary officer is charged with a number of responsibilities including: fact investigation; recommendation of sanctions; consultation with the shift supervisor on the prehearing status of the resident; serving notice to resident and board; and general supervisory authority for the implementation of disciplinary rules. A disciplinary officer will be appointed for a three month renewable term and an alternate will be designated by the superintendent to serve during periods of absence. Interested persons are encouraged to suggest disciplinary officer candidates to the superintendent.

B. THE DISCIPLINARY BOARD WILL BE COMPRISED OF THREE MEMBERS DESIGNATED BY THE SUPERINTENDENT OR HIS DEPUTY.

Neither the disciplinary officer nor any person who witnessed the events shall sit on the disciplinary board. Board members need not be members of the institution's staff.

II. Reporting of Alleged Violations

A. EXCEPT FOR THOSE SITUATIONS WHERE ONLY SLIGHT SUMMARY PUNISHMENT SHOULD BE IMPOSED, ANY EMPLOYEE WHO OBSERVES OR HAS RECEIVED REPORT OF AN APPARENT VIOLATION BY A RESIDENT AFTER TAKING APPROPRIATE SECURITY MEASURES SHALL MAKE A SUFFICIENT INVESTIGATION SO THAT HE IS CERTAIN OF THE AVAILABLE FACTS. HE SHOULD IMMEDIATELY NOTIFY THE SHIFT SUPERVISOR AND COMPLETE A DISCIPLINARY REPORT.

These rules in no way preclude or discourage the present practice of the informal handling of very minor violations where an officer or supervisor issues a warning or otherwise disposes of the matter short of a formal sanction and disciplinary report.

B. THE SHIFT SUPERVISOR WILL REVIEW THE DISCIPLINARY REPORT FOR COMPLETENESS, ACCURACY, AND POSSIBLE MITIGATING CIRCUMSTANCES AND SUPPLEMENT THE REPORT WITH ANY PERTINENT DATA.

The supervisor has the authority to dismiss or revise a charge and/or handle the matter informally. He also makes the decision as to the resident's prehearing status pending consultation with the disciplinary officer.

C. THE DISCIPLINARY REPORT WILL THEN BE FORWARDED TO THE DISCIPLINARY OFFICER. A COPY OF THE REPORT SHALL BE FURNISHED TO THE RESIDENT.

The disciplinary officer has the responsibility of serving the resident with both a notice of charges and a copy of the disciplinary report as soon as practicable. Alleged violations will be investigated by the disciplinary officer unless he certifies the matter directly to the board for a formal hearing. Those matters certified directly to the board for a formal hearing are designated *major matters* while those retained by the disciplinary officer for his consideration are designated *minor matters.* Where the shift supervisor has placed the resident in pre-hearing detention, the disciplinary officer will consult with the shift supervisor concerning the resident's prehearing status.

III. Proceedings Before the Disciplinary Officer

A. Upon Receipt of the Disciplinary Report the Disciplinary Officer Will First Determine Whether To Certify the Matter to the Disciplinary Board For a Formal Hearing as a Major Matter. Where the Disciplinary Officer Designates the Case as a Minor Matter He Will Conduct an Independent Investigation and Make a Finding of Fact Which Shall Specify: Not Involved; Insufficient Facts To Justify Disciplinary Action; or Guilty of a Specific Violation or Violations. A Recommended Sanction Shall Accompany a Finding of Guilty.

In every case to be considered on the merits by the disciplinary officer he will interview the resident after first serving him with a notice of charges and a copy of the disciplinary report. Where the resident contests the allegations, the disciplinary officer shall interview the reporting officer and others witnessing

the events. The findings of fact will be based upon reliable evidence. Sanctions shall be recommended in light of both the offense and the offender.

B. The Findings and Recommended Sanction or Sanctions Shall Be in Writing and Presented to the Resident Who May Elect To Accept the Finding and/or Sanction, or May Appeal Either or Both to the Disciplinary Board.

The disciplinary officer or his representative shall normally present the finding and recommended sanction in person to the resident within 24 hours of the events, at which time he may discuss the events and options with the resident and shall advise the resident of his appellate remedy and supply him with the requisite form. In the special circumstances where the investigation cannot be completed within 24 hours of the events, the resident shall be so informed within the 24 hour period. Under no circumstances will a finding and sanction be presented after 72 hours from the events in question.

C. Where the Finding and/or Sanction Is Appealed the Disciplinary Officer Shall Forward the Disciplinary Report, the Findings, and Recommended Sanction to the Disciplinary Board Which Will Schedule a Hearing Within Five Days.

The resident shall be notified immediately of the scheduled date and time of the hearing and may request a short continuance for good cause.

D. Where the Case Is Certified to the Disciplinary Board as a Major Matter a Hearing Shall Be Scheduled Within Three Days.

Upon receipt of the disciplinary report the disciplinary officer must decide within 24 hours whether the case will be handled as a major matter. Once certified as a major matter the resident will be given notice of the charge and a copy of the disciplinary report. The disciplinary officer may consult the resident or any other person prior to certifying the case to the board for a formal hearing.

IV. Proceedings Before the Disciplinary Board

A. The Disciplinary Board Will Consider Both Major Violations and Those Minor Violations Appealed From the Disciplinary Officer.

In considering appeals on *minor matters* the board shall conduct a hearing at which the resident has the right to testify on the merits, present a statement in writing, and present any information in mitigation of punishment, though he shall not be compelled to testify. As to the findings on the merits, the board may: affirm the findings of the disciplinary officer, find the resident guilty of a lesser violation; or reverse the finding and dismiss the charge. As to the recommended sanction, the board has authority to affirm or reduce the sanction. The board's finding must be based upon reliable evidence and the resident may view any report considered by the board. No testimony may be presented outside the resident's presence unless he voluntarily absents himself.

In considering *major matters* the disciplinary board shall conduct a formal hearing where the resident may be represented by counsel of a law student. Where a resident is represented the institution may

also be represented by counsel or a law student. It is the resident's responsibility to secure the services of a representative and to this end he shall be permitted to make one telephone call to counsel or a law student group. If the resident desires the reporting officer's presence he must make this request at least one day prior to the hearing. It will be the responsibility of the disciplinary officer to schedule a hearing in accord with the officer's duty schedule. The board's finding must be based upon reliable evidence and the resident may view any report considered by the board. No testimony may be presented outside the resident's presence unless he voluntarily absents himself. The resident or his representative may question the reporting officer. The resident has the right to testify on the merits, present a statement in writing, and present any information in mitigation of punishment though the resident shall not be compelled to testify.

B. The Disciplinary Board's Findings Will Be Based Only Upon Reliable Evidence, and Matters External to the Case Will Not Be Considered.

The resident's past record is irrelevant to the consideration of the facts in question though it may be considered in deciding the appropriate sanction. The board's decision will be given to the resident within 48 hours after the hearing. The written statement containing the decision, findings of fact, and sanction will include a notice of the resident's right to appeal.

V. Appeal

A. Appeals From the Disciplinary Board on Minor Violations Will Be Considered by the Deputy Superintendent.

Where the deputy superintendent sat on the disciplinary board the superintendent will consider the appeal in the case of a minor violation. Routinely, a review of all disciplinary matters handled by the disciplinary officer, whether or not an appeal has been made, will be conducted by the Deputy Superintendent and he may take any action that he might have made in a case of an appeal.

B. Appeals on Major Violations Will Be Considered by the Superintendent and Cases Involving Recommended Good-time Forfeitures Will Be Reviewed by the Commissioner of Correction.

C. In No Event May a Person or Board Serving in an Appellate Capacity Increase Any Sanction or Charge.

VI. Resident's Status Pending Hearing

The Resident's Custody Prior to the Hearing Will Normally Remain Unchanged. He May Be Placed in Pre-hearing Detention Only Where He Is a Threat to Himself or Others.

In reviewing the disciplinary report the shift supervisor makes the initial determination on the resident's pre-hearing status. Where the resident is placed in detention the disciplinary officer, upon receipt of the disciplinary report, shall consult with the supervisor concerning the resident's pre-hearing status.

VII. Offenses and Sanctions

A. Major Matters Are Defined as Those For Which Punishment May Include: Isolation; Good-time Forfeiture; Transfer; or Any Sanction Authorized For Minor Violations.

B. Minor Matters Are Defined as Those Carrying Sanctions Which Are Limited to the Following: Warning and/or Probation; Loss of Certain Privileges For a Specified Time Period; Room Restrictions; Change of Housing Assignment Within the General Population; Restitution; and Change of Work Assignment and/or Extra Duty.

Each MCI may find it appropriate to modify or supplement the scope of minor sanctions but in no event may isolation, transfer, or good-time forfeiture, result from conviction of minor violations.

C. Punishable Offenses Are Limited to Those 28 Offenses Listed on the Disciplinary Reports Which Are Presently in Use by the Department. Determination of Whether an Alleged Violation Shall Be Handled as a Minor Matter or a Major Matter Will in All Cases Depend on the Nature and Extent of the Harm Done and the Threat to Institutional Security.

After the 60 day test period the list of punishable offenses will be modified. Many of the specified offenses can constitute either a major or minor matter depending upon the harm done. For example, a fight can be a very serious matter or a minor situation depending upon the nature of the harm done and the threat to the security of its institution. Also

theft can constitute a major or a minor situation depending upon the values of the property. Clearly cases involving little or no threat to the well-being of others and their property and security of the institution are intended to be handled as minor matters.

D. In Accordance With Present Practice and Law, Where the Superintendent Determines That a Felony Has Been Committed Within the Institution, He Shall Refer the Matter For Outside Prosecution Pursuant to Chapter 127, § 38C.

In no case where formal prosecution is pursued shall an alleged violation be the subject of an institutional sanction. The shift supervisor will make the initial decision as to pre-trial status. The superintendent upon the advice of the disciplinary officer and/or board shall make the final decision as to the resident's pre-trial status within 24 hours of the referral for formal prosecution.

The resident may request either the convening of a disciplinary board or an interview with the disciplinary officer for consideration of their recommendation to the superintendent. In every case either the disciplinary officer or the disciplinary board will make a pre-trial custody status recommendation. Upon the superintendent's request the board or disciplinary officer will also make a recommendation as to whether the case warrants outside prosecution. Where the disciplinary board considers either pre-trial custody status or the referral for prosecution, the hearing shall be conducted under the procedures governing major matters.

United States District Court
District of Massachusetts

Civil Action No. 74-5095-S

Fano Et Al

v.

Meachum Et Al

STIPULATION OF FACT

The parties hereby stipulate as follows:

1. During the period October 13, 1974 to October 31, 1974, there were a series of fires at Massachusetts Correctional Institution (MCI), Norfolk. The fire departments of the towns of Norfolk, Franklin, Wrentham and Walpole were sent into MCI Norfolk many times during this period. The statements from the fire departments of these towns attached hereto as Exhibits 1, 2, 3, 4 and 5 are authentic and the facts stated therein are accurate.
2. Since October 23, 1974 to date, there has been three fires at MCI Norfolk, one on October 25, 1974, one on October 31, 1974 and one on November 26, 1974. None of these fires was serious enough to require that any fire department forces be sent into MCI Norfolk.
3. The plaintiffs were removed from the general population at MCI Norfolk on October 24, 1974 with the exception of plaintiff McPherson who was removed from general population on October 16, 1974.
4. The letter from Commissioner Frank A. Hall (attached hereto as Exhibit 6) and the lists of incidents of fires at MCI Norfolk prepared by John Murphy, Assistant Deputy Superintendent of MCI Norfolk attached hereto as Exhibit 7 are authentic. The parties do not stipulate to the accuracy of the statements contained therein.

Counsel for Plaintiffs:

_____

Date:

Counsel for Defendants:

_____

Date:

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION]

December 10, 1974

Mr. David M. Marchand, Secretary
Executive Office of Administration and Finance
State House
Boston, MA 02133

Dear Secretary Marchand:

As you perhaps know, MCI-Norfolk was plagued by a series of inmate-caused fires during the period October 13 – October 31, 1974 which caused damage estimated to be in excess of $100,000 and the loss of two living units and the partial loss of the laundry. Attached is a report submitted by the institution which chronicles these fires—both major and minor—during this period. While critical, this situation never developed into the type of "emergency" that has occurred in the past and could occur at some future time. It nonetheless required the utilization of a substantial amount of the Department's resources.

In order to prevent the fires, to the extent possible, and to minimize the damage caused by those that could not be prevented, I deemed it necessary to increase the number of officers at MCI-Norfolk to man extra patrols on each shift. In total, approximately 250 hours of overtime were necessary during this 21 day period, resulting an in expenditure of $24,713.93. In addition, to ensure that manpower would have been available immediately in the event that this fire setting developed into a still more serious situation, I felt it necessary to hold 25 officers assigned to MCI-Walpole for 4 hours beyond their normal eight hour shift on

October 16, October 21 and October 23, 1974. This 300 man-hours of overtime resulted in an expenditure of $8,055.

The Fiscal Year 1975 Budget (Chapter 431 of the Acts of 1974) allocates $78,000 for overtime for both custodial and non-custodial personnel at MCI-Norfolk. During Fiscal Year 1974, a shortage of security staff required approximately $265,000 in correction officer overtime, most of which had to be funded through a deficiency budget. The FY 1975 budget addresses this problem by authorizing the establishment of 19 new custodial positions at MCI-Norfolk.

It is nonetheless apparent that there will not be sufficient funds in the 02 subsidiary to meet overtime requirements, given the recent large expenditure, at either MCI-Norfolk or MCI-Walpole. I also feel that there have been no reasonable options open to stop the overtime. As Commissioner of Correction, I am also responsible for the safety of Department personnel, inmates and the general public and these responsibilities must have a high priority.

Perhaps the most expedient action for me to take is to do what has been done too often in the past: ask the officers to continue to work overtime even after the funds available have been exhausted and ask the Governor and the Legislature sometime next spring to authorize funds to meet this large unpaid bill. There are several reasons why I prefer not to do this. First, I respect the Legislature's authority to appropriate funds and I do not want to presume to infringe on this prerogative by spending more funds than are appropriated to the Department. Rather, I consider part of my responsibility as Commissioner to closely monitor the Department's rate of expenditure and in the event that it appears that expenditures are likely to exceed appro-

priations to take immediate action to control these expenditures, or, if they are not subject to my control, to promptly notify the appropriate authorities in the Executive branch and in the Legislature of the need for additional funds.

Moreover, I feel it is grossly unfair to the personnel at MCI-Norfolk to require them to work the overtime and not be paid promptly. They are providing an important, necessary and hazardous service and should not be penalized for fulfilling their responsibilities.

In order to pay this overtime promptly, I am therefore requesting a transfer of $24,713.93 from the unforseen emergency reserve (Item 1599-2025, Chapter 431 of the Acts of 1974) to the 02 subsidiary of MCI-Norfolk's appropriation account (4316-0001) and a transfer of $8,055 from the unforeseen emergency reserve to the 02 subsidiary of MCI-Walpole's appropriation account (4313-0001). I certify than an unforeseen emergency existed at the time this overtime was incurred.

In addition to utilizing its own resources, the Department was compelled to seek the assistance of the fire departments of the towns of Franklin, Norfolk, Wrentham and Walpole to extinguish the numerous fires that occurred. Under difficult and hazardous circumstances, these Departments performed admirably and effectively. Attached is an accounting of the costs incurred by each of these Departments in extinguishing fires at MCI-Norfolk during the period October 12 – October 31. These costs totalled $5,405.79.

In this instance, as well, the Department simply does not have the means to reimburse these towns for their services during the emergency situation. I respectfully recommend

that funds be transferred from the unforseen emergency reserve to reimburse these towns for the expenses incurred by their fire departments in extinguishing the fires at MCI-Norfolk during the period October 13 - 31, 1974.

I would appreciate your prompt consideration and approval of this request. Thank you again for your assistance.

Sincerely,
(s) FRANK A. HALL
FRANK A. HALL
Commissioner

FAH :BJR :cf
cc: Peter C. Goldmark, Jr., Secretary

Oct. 13, 1974 Approximately 1:30 A.M. Fire reported in attic Unit 7-3 Extensive damage to attic. [Illegible] 9 inmates relocated.

Oct. 16, 1974 7:00 P.M. Fire reported in attic Unit 7-3. Fire again reported, [Illegible] 10:30 P.M. All inmates relocated in other units [Illegible]

Oct. 17, 1974 8:45 P.M. Fire reported in attic. [Illegible]

Oct. 18, 1974 9:00 A.M. Fire reported in cell of Unit 1-2. Extensive damage. [Illegible]

Oct. [Illegible]

Oct. 21, 1974 1 A.M.—Minor fire—desk top in room of John Taylor, Unit 1-3.

Oct. 21, 1974—12:15 A.M. Fire reported in cellar of Unit 1-2—Out at 2:00 A.M.
12:30 A.M.—Trash barrel fire Unit 1-3—2nd floor.

Oct. 21, 1974 4:02 P.M. Fire reported in Institution Laundry. Extensive damage to back room

(sorting room) bins and marking equipment.
12:00 Noon. Fire discovered in rag bin—Iad. Bldg. Stock room.
3:55 P.M.—Attempt to set fire to desk outside C.S.D. Office.

Oct. 22, 1974. Damage was discovered in Room 2-15 — School Bldg.—Curtains and window shades showed fire damage. Date or times of fire unknown.

Oct. 22, 1974. Waste basket fire in Hospital.
A.M.

Oct. 23, 1974. 9:15 P.M. — Fire in attic of Unit 3-2. Firemen from Norfolk, Wrentham, and Walpole in. Considerable damage to roof. All inmates removed to R.B. — Fire trucks out at 12:00 mid.

Oct. 25, 1974. 10:15 A.M. — Fire reported in Spanish Class room 207 — School Bldg. Damage to books, book cases and wall. (Put out with extinguisher).

Oct. 31, 1974. Approximately 12:00 Noon. — Fire in rubbish barrel, Unit 6-1 cellar. NO damage.

BOARD OF SELECTMEN
Norfolk, Massachusetts

November 14, 1974

Commissioner Frank Hall
Massachusetts Correctional Institution Norfolk
Main Street
Norfolk, Mass.

Dear Commissioner Hall,

Enclosed please find [illegible] recent prison fires at MCI Norfolk
Included, besides Norfolk, is a list for each surrounding town that assisted during these fires.

We hope that this information is of some help to you.

Very truly yours,

BOARD OF SELECTMEN, TOWN OF NORFOLK

(s) ROBERT K. FORSBERG
ROBERT K. FORSBERG, Chairman
RKF/mp
Enclosures

[Letterhead — TOWN OF NORFOLK, FIRE DEPARTMENT]

November 4, 1974

FIRES AT MCI, NORFOLK
8/31/74 - 10/23/74
[First two dates and data illegible]

10/13	1:31 am	8 men	2 hrs.	68.80
10/16	7:08 pm	15 men	2 hrs.	120.00
10/16	10:00 pm	13 men	5 hrs.	168.00
10/17	8:50 pm	13 men	2 hrs.	103.50
10/21	12:23 am	10 men	3 hrs.	129.75
10/21	4:08 pm	13 men	2 hrs.	112.00
10/23	9:20 pm	12 men	5 hrs.	253.75
			TOTAL	$1153.00
				—182.50
				970.50

Chief ..... $5.00 per hr.
Firemen ..... 4.25 per hr.

CHIEF JAMES H. CRIBBY
[Letterhead — FRANKLIN FIRE DEPT., Franklin, Mass.]

November 4, 1974

COST OF RESPONSE OF THE FRANKLIN FIRE DEPARTMENT
FRANKLIN, MASS. TO MCI, NORFOLK, 10/16/74 - 10/23/74

10/16	7:17 PM	5 men	2 hours	@$5.99	$859.90
10/16	7:17 PM	8 men	2 hours	4.99	79.84
10/16	11:00 PM	4 men	2 hours	5.99	47.92
10/16	11:00 PM	11 men	1 hour	4.99	54.99
		[ILLEGIBLE]			
10/21	4:08 PM	7 men	1 hour	5.99	41.93
10/21	4:08 PM	3 men	2 hours	5.99	35.94
10/21	4:08 PM	7 men	2 hours	4.99	59.85
10/23	9:20 PM	5 men	3 hours	5.99	89.85
10/23	9:20 PM	1 man	2 hours	4.99	9.98
10/23	9:20 PM	10 men	3 hours	4.99	149.70
				TOTAL	$922.39

(s) PAUL H. BEAUDETTE
PAUL H. BEAUDETTE, Chief

TOWN OF WRENTHAM, FIRE DEPARTMENT

October 21, 1974
(4:29 p.m. - 6:00 p.m.)
Engine 1 = $50.00 plus payroll of $135.26 for total of $185.26.

October 25, 1974
(9:20 p.m. - 12:20 a.m.)
Engine 1 —$50.00 Engine-Rescue 7 — $50.00
Plus payroll of $420.90 for total of $520.90

TOTAL COSTS = $706.16.

[Letterhead — TOWN OF WALPOLE]

October 24, 1974

COST OF RESPONSE BY THE WALPOLE FIRE DEPARTMENT,
WALPOLE, MASS. TO MCI, NORFOLK 8/31/74 - 10/23/74

8/31	3:02 pm	18 men	1 hr.	$100.44
9/12	5:42 pm	28 men	2 hrs.	286.44
10/13	1:35 am	21 men	2 hrs.	214.83
10/16	7:10 pm	27 men	2 hrs.	276.21
10/16	10:15 pm	28 men	3 hrs.	416.64
10/17	8:48 pm	30 men	2 hrs.	306.90
10/21	12:31 am	29 men	3 hrs.	431.52
10/21	4:10 pm	36 men	3 hrs.	535.68
10/23	9:22 pm	32 men	4 hrs.	624.96
			TOTAL	$3,193.62
				386.88
				2,806.74

1st hour ..... rate, 5.58
2 or more hours ..... rate, 4.65

(s) ROBERT M. GARDNER
ROBERT M. GARDNER, Chief

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

[Title Omitted in Printing]

ANSWER OF DEFENDANT MEACHUM

Now comes Defendant Meachum in the above-entitled matter and, by his attorney, makes the following answers to the amended complaint filed herein stating:

1. That paragraphs 1, 7 and 8 of said complaint do not contain factual allegations which admit of a responsive pleading;

2. That Defendant Meachum denies paragraph 2, 9, 10, 17, 19d, 19h, 25, 27, 33 and 35 through 46, inclusive, of said complaint and calls upon plaintiffs to prove same;

3. That said Defendant Meachum admits paragraph 3-6, inclusive, 12-15, inclusive, 18, 20, 22, 23, 24, 26, 30 and 34 of said complaint;

4. With regard to paragraph 11, that Defendant Meachum denies that McPherson was not told why he was placed in segregation and denies that he (McPherson) received no notice (inasmuch as oral notice was given), but admits all other factual allegations contained within said paragraph of the complaint;

5. With regard to paragraph 16, Defendant Meachum admits the factual allegations contained in said paragraph,

except that he denies all of those factual allegations contained within the last sentence of said paragraph;

6. With regard to paragraph 16, Defendant Meachum denies that "being placed in segregation at M.C.I., Norfolk inflicts a grievous loss on the plaintiffs and is, therefore, the constitutional equivalent of punishment," but admits all other factual allegations contained within said paragraph of the complaint;

7. With regard to paragraph 21, Defendant Meachum admits all factual allegations contained in said paragraph admits all factual allegations contained in said paragraph, except those found in the last sentence of said paragraph which he denies;

8. That Defendant Meachum admits all factual allegations contained within paragraph 29, except that he denies those allegations contained within sub-paragraph C thereunder;

9. With regard to paragraph 31, Defendant Meachum admits all factual allegations contained therein, except that he denies that plaintiffs were "not informed of its contents;"

10. With regard to paragraph 32, Defendant Meachum denies that Defendants Hall and Dawber "did not make an independent investigation" and "relied wholly upon the record made in the Classification Board hearing" and that they based their decision solely upon the information presented therein;"

11. And further answering, Defendant Meachum states that the remaining paragraphs of said complaint do not contain factual allegations which admit of a responsive pleading.

Respectfully submitted,
ROBERT H. QUINN
Attorney General
BY: (s) WILLIAM T. HARROD III
WILLIAM T. HARROD III
Deputy Assistant Attorney General

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT,
D. MASSACHUSETTS

CIV. A. No. 74-5059-S.
ARTHUR FANO et al.,
Plaintiffs,
v.
LARRY MEACHUM et al.,
Defendants.

Robert Stolzberg, Linda Olmstead, Roxbury Defenders Committee, Roxbury, Mass., for plaintiffs.

Michael C. Donahue, William T. Harrod III, Asst. Attys. Gen., Robert H. Quinn, Atty. Gen., Boston, Mass., for defendants.

OPINION AND ORDER
Jan 10, 1975

SKINNER, District Judge.

This petition is brought under the Civil Rights Act, 42 U.S.C., Section 1983, for declaratory, injunctive, and compensatory relief by 17 inmates of the Massachusetts Correctional Institution, Norfolk, a medium security state prison operated by the Massachusetts Department of Correction. They allege, in substance, that they have been reclassified into substantially more adverse conditions of confinement because of specific prior conduct without the due process required by the Fourteenth Amendment to the Constitution of the United States.

The complaint was filed on November 4, 1974. The plaintiff's motion for a temporary restraining order was denied without hearing on the same day.

On December 12, 1974, six of the plaintiffs, namely Arthur

Fano, Richard DeBrosky, Robert Dussault, David Hathaway, Richard McPherson and Charles Royce filed an Amendment Verified Complaint on behalf of themselves and "all others similarly situated." There has been no showing which would justify the certification of this action as a class action and the Amended Verified Complaint, therefore, will be considered only with reference to the six named plaintiffs who have filed it. The same six plaintiffs (hereinafter referred to as the plaintiffs) have filed a motion for a preliminary injunction on which a hearing was held on December 20, 1974. The matter was presented on stipulations of fact, stipulated documents, and the testimony of the plaintiff Hathaway. There does not appear to be any material issue of fact.

FINDINGS OF FACT

In the fall of 1974, there was a period of unrest among the inmates of M.C.I., Norfolk. From August 13, 1974 through October 23, 1974, there were nine fires in the institution, thought to have been set, which were serious enough to require the presence of outside fire departments. In addition, there were three less serious fires, one on October 25, 1974, one on October 31, 1974, and one on November 26, 1974.

Plaintiff McPherson was taken from the general population at M.C.I., Norfolk, on or about October 16, 1974, and placed in a cell in the Receiving Building at the institution (hereinafter referred to as the RB). On October 24, the plaintiffs Fano, DeBrosky, Dussault, Hathaway and Royce were taken from the general population and placed in cells in the RB.

The RB at M.C.I., Norfolk, is apparently principally used for the processing of new inmates. In effect, it also serves as an informal Departmental Segregation Unit, though it apparently has not been officially designated as such. The conditions of confinement in the RB are roughly comparable to those in the Departmental Segregation Unit, Cell Block 10, at M.C.I., Walpole described in the Revised Opinion and Order in

Daigle et al. v. Hall et al., CA 74-4783-S, filed January 7, 1975. No notice or hearing was afforded the plaintiffs before their transfer to the RB.

On October 25, 1974, the defendant Meachum filed and presented each plaintiff with a copy of a disciplinary report. The offenses charged against each plaintiff were described in substantially the same terms as appears in the notices of reclassification hearings hereinafter quoted. In each case the offense charged was referred to the local District Attorney for investigation and outside prosecution. Consequently, in accordance with paragraph VII D of Commissioner's Bulletin 72-1, no disciplinary hearing was held.

On November 4, 1974, each of the six plaintiffs received a Notice of Classification Hearing. With reference to the plaintiffs Fano, DeBrosky, and Dussault, the reason for review of the classification status was set forth as follows:

> "The department has received information through a reliable source that you were in possession of instruments, or materials, that might be used as weapons and/or ammunition and that you had joined in plans to use these contraband items.
>
> "These items and plans occurred during a period of serious unrest at MCI, Norfolk which included many fires that posed a significant threat to the lives of persons at MCI, Norfolk as well as serious property damage."

With respect to the plaintiffs Hathaway and McPherson, the reason for review of the classification status was stated as follows:

> "The department has received information through reliable sources that you were significantly involved in the planning and execution of one or more of the serious fires occurring with MCI Norfolk in the past few weeks. These fires caused considerable property damage and posed a very real threat to personal safety."

With respect to plaintiff Royce, the reason for review of the classification status was as follows:

> "The department has received information through a reliable source that you were involved in the trafficking of contraband in MCI, Norfolk, (narcotics, barbiturates and/or amphetamines.) This occurred during a period of serious unrest at MCI Norfolk which included many fires, that posed a significant threat to the lives of persons at MCI Norfolk as well as serious property damage."

On November 6, 8, 11 and 13, classification hearings were held with respect to each of the six plaintiffs. Each plaintiff was represented by counsel. The evidence with respect to the alleged offenses committed by the plaintiffs, however, was given in closed session outside of the presence of the plaintiffs and their counsel and was apparently, in each case, in the form of recitation by the defendant Meachum of information purportedly furnished to him by a confidential informant. The nature of this information has never been made known to the plaintiffs or to their counsel even in summary form. They have not been informed of even so much as the dates and places of the alleged offenses.

The classification board made a recommendation for a transfer to either Walpole or Bridgewater in the case of each plaintiff except Royce, who was to be held in administrative segregation for thirty days and given a second classification hearing at the end of thirty days.Each plaintiff appealed this classification recommendation to the defendant Hall. The defendant Hall denied the appeals, but modified the recommendations of the classification committee and entered orders transferring all of the plaintiffs, including Royce, to MCI, Walpole, except Hathaway, who was ordered to be transferred to MCI, Bridgewater. At the time of the hearing all of these transfers had been accomplished except that of the plaintiff LeBrosky, who was in the hospital at MCI, Norfolk, and Hathaway, who was retained in the RB at MCI, Norfolk.

[1] I find that the conditions of confinement at MCI, Walpole and MCI, Bridgewater, are substantially more adverse than they are at MCI, Norfolk. I further take judicial notice that these institutions have been deliberately differentiated to provide graduated conditions of confinement within the Department of Correction.

RULINGS

This state of facts raises once again the issue of the subjection of prison inmates to what are essentially disciplinary procedures without the elements of due process required under the rule of Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2968, 41 L.Ed. 2d 935 (1974). As in Daigle v. Hall, *supra*, a hearing before a disciplinary board was bypassed because the alleged offenses had been referred to the local District Attorney for investigation and prosecution. The applicable rules of law were extensively discussed by this court in the Revised Opinion and Order in Daigle v. Hall filed January 7, 1975, and need not be repeated here.

The defendants assert, however, that the cases of these plaintiffs do not fall within the general rule and that they have received all of the due process to which they are entitled, because the information concerning their alleged offenses was derived from confidential informants. The defendants claim that they are not obliged even to provide a summary of the information derived from the confidential informant, or even so much as the dates and places of the alleged offenses, because to do so would compromise the confidential informants. They further assert that the policy which they have followed in these cases is necessary to safeguard the lives of the confidential informants, to preserve the flow of information to the administration and to maintain the safety and good order of the institution.

The defendants apparently feel that they are unable, at the medium security institution at Norfolk, to follow the minimum requirements established for such situations at the maximum security prison at MCI, Walpole.

[2] Institution Order 4310.1,* which is applicable to disciplinary hearings at Walpole, contains in Section 11.4 h) the following provisions:

> "The board may issue any orders it deems necessary to conducting a thorough and adequate investigation, including the calling of witnesses and production of evidence. No testimony may be taken outside the accused resident's presence unless he voluntarily absents himself, or the board chairman determines that disclosure would involve:
>
> (1) Subjecting the informant to a risk of harm or
>
> (2) A substantial risk to institutional security
>
> (3) On making a finding that a threat exists and that there is need for protection of sources, the board chairman will note such a finding in the hearing record
>
> (4) He will also summarize the information in question for the accused resident and state generally the board's reasons for such protective action."

[3] It is absolutely basic to any concept of due process that a person charged be given sufficient information concerning the charge against him so that he may intelligently prepare a defense. The above quoted Section 11.4h) sets forth the constitutional minimum. The defendants thus have three constitutionally acceptable choices:

1. To follow a procedure substantially in accordance with the above quoted Section 11.4h);
2. To develop independent evidence which would obviate the need for the confidential informant's testimony; or
3. To forego disciplinary action if the interest in preserving the secrecy of confidential information is deemed paramount.

[4] It is clear that the procedure followed by the defendants with respect to these plaintiffs does not meet constitutional requirements of due process, and their actions with respect to these plaintiffs cannot be allowed to stand. The notice of the hearing, furthermore, must at the very least state the time and place of the alleged offense with reasonable accuracy.

*This Order was not introduced in evidence in this case, but in Daigle v. Hall, *supra*. The defendant Hall, at least, is charged with knowledge of it, and the Court takes judicial notice of it for purposes of this case.

[5] Since uniformity is an aspect of due process in a correctional institution, the matters herein referred to should be the subject of departmental regulation. Most of these matters are covered by the order in Daigle v. Hall, *supra*. There is no evidence of any order in force at MCI Norfolk comparable to Institution Order 4310.1. Some regulation conforming in substance to Section 11.4h) of that order must be promulgated. Whether it should be promulgated as a departmental order or left to the superintendents of the various institutions to produce approximate versions of it, is up to the defendants. Although Institution Order 4310.1 provides disciplinary hearing rules which exceed the minimum requirements of Wolff v. McDonnell, *supra*, there should be reasonable uniformity within the department; inmates at Norfolk are entitled to at least the level of due process afforded their brethren at Walpole.

[6] In accordance with the foregoing, I hereby enter the following Preliminary Order.

PRELIMINARY ORDER

It is ordered, adjudged and decreed as follows:

1. The defendants are ordered to return the plaintiffs to the general population at MCI Norfolk forthwith, and not transfer them to conditions of confinements substantially more adverse than the conditions of confinement at MCI Norfolk by reason of their specific prior conduct, until they have been afforded a hearing substantially in accordance with the requirements of a disciplinary hearing as set forth in Commissioner's Bulletin 72-1 and Institution Order 4310.1; notwithstanding the fact that much specific prior conduct may have been referred to an

outside law enforcement agency for investigation or prosecution.

2. The defendants Hall and Meachum, or either of them, are ordered to submit to the court for approval regulations governing the inmates at MCI Norfolk which will provide them with rights to hearings substantially in accordance with Institution Order 4310.1 and the orders of the court entered in Daigle v. Hall, *supra*.
3. Nothing herein contained shall prevent the defendant Meachum from placing the plaintiffs, or any other inmate, in the Receiving Building for a short period on an emergency basis if in his considered opinion, the safety of inmates or the good order of the institution require it; provided that in every case an appropriate hearing be afforded the inmate as promptly as possible.
4. This case shall stand for further hearings on the claims of the other eleven plaintiffs and for hearings on the claims of all plaintiffs for damages.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIV. A. No. 74-5059-S.
ARTHUR FANO et al.,
Plaintiffs,
v.
LARRY MEACHUM et al.,
Defendants.

STATEMENT OF REASONS FOR DENYING STAY
January 17, 1975

SKINNER, D.J.

1. The defendants have deliberately (and properly) differentiated the various institutions within the department with respect to severity of confinement. Transfer to MCI Norfolk from MCI Walpole is considered a reward for good behavior, and transfer from MCI Norfolk to MCI Walpole or MCI Bridgewater is punishment.

2. The plaintiffs are presently under such punishment without having had any hearing worthy of the same. The burden on the defendants to comply with the order can not be regarded as unreasonable since the required procedure is presently in force at MCI Walpole, the maximum security prison. No explanation has been offered as to why the application of this rule would be more disruptive at MCI Norfolk than at MCI Walpole. The "hearings" allegedly given the plaintiffs provided no information as to the charges against which the plaintiffs were required to defend themselves.

(s) Walter Jay Skinner
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

[TITLE OMITTED IN PRINTING]

AFFIDAVIT OF LARRY MEACHUM

I, Larry Meachum, being duly sworn, hereby depose and say:

1. I am the Superintendent of the Massachusetts Correctional Institution, Norfolk.

2. During the month of October, 1974 there was a period of serious disruption at M.C.I., Norfolk during which numerous fires were set in the institution. Some of these fires caused severe damage to the institution. Bed space for 100 inmates was rendered unusable by the fires.

3. Based upon information from reliable inmate informant sources which was relayed to me by members of my staff, I concluded that Plaintiffs were among the inmates responsible for the disruption in the institution. Specifically, informant information linked Plaintiffs Hathaway and McPherson to the setting of fires in the institution, Plaintiff Royce to trafficking in contraband (narcotics, barbiturates, and amphetamines), and Plaintiffs Dussault, Fano, and DeBrosky to the possession of weapons.

4. Based upon this information, Plaintiffs and other inmates were removed from the population at M.C.I., Norfolk to an area of separate confinement at the institution. Plaintiffs were then given notices of classification hearings, copies of which were filed with the Court with a Stipulation of the parties on December 20, 1974.

5. Plaintiffs were then afforded classification hearings at which they could be represented by counsel. I am informed that at the beginning of each hearing, the Plaintiff who was the subject of the hearing was informed that there was informant information to be presented to the board and that this would be done without the inmate or his counsel being present and that the inmate and his counsel were then asked to leave the room. I then presented to the board the informant information which I had received along with a record of prior instances of each informant's information having proved reliable.

6. In my opinion, giving Plaintiffs a more detailed description of the activities they were alleged to have been involved in would have created a substantial risk of revealing the identity of the informants, thereby placing their lives in danger.

7. Following these hearings and final decision by the Commissioner of Correction, the Plaintiffs were removed from M.C.I., Norfolk to M.C.I., Walpole with the exception of Plaintiff Hathaway who was removed to M.C.I., Bridgewater.

8. Except for a few minor instances, the fires at M.C.I., Norfolk stopped after the Plaintiffs and other inmates were removed from the institution.

9. Since the Plaintiffs and other inmates were removed from M.C.I., Norfolk, I and members of my staff have received information from inmates other than the original informants to the effect that the administration had removed from the population of M.C.I., Norfolk the inmates who were responsible for the disruption in October of 1974.

10. In my opinion, if Plaintiffs are permitted to return to the population at M.C.I., Norfolk, there will be a very great risk of further disruption at the Institution.

(s)LARRY R. MEACHUM
LARRY MEACHUM

Subscribed and sworn to before me in the City of Boston, County of Suffolk, Commonwealth of Massachusetts, this 22nd day of January, 1975.

(s) ILLEGIBLE

My Commission expires: Nov. 7, 1980.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MISC. No. 75-8006
ARTHUR FANO, et al.,
Plaintiffs, Appellees,
v.
LARRY MEACHUM, et al.,
Defendants, Appellants.

Before COFFIN, *Chief Judge*,
ALDRICH and CAMPBELL, *Circuit Judges*.

MEMORANDUM AND ORDER ON APPELLANTS' MOTION FOR STAY PENDING APPEAL
Entered January 23, 1975

Plaintiffs-appellees have presented substantial claims and the injunctive relief ordered by the district court indicates careful consideration. Nonetheless, we are aware that the precise requirements of constitutional due process in cases of intrastate prisoner transfers and where informant confidentiality is at stake have yet to be settled by the Supreme Court or in this circuit. We must also recognize that Massachusetts bears a heavy responsibility for the security of its correctional institutions and the safety of personnel and inmates. We therefore think that it would be premature to set aside the judgment of state correctional officials at least until such time as the merits of this appeal have, on an expedited basis, been determined.

The motion for stay pending appeal is granted until further order of court.

It is further ordered that the hearing on the merits be expedited in accordance with the following briefing schedule:

Four (4) copies of the brief for appellants and the appendix reproduced in compliance with Local Rule 11(d) with proof of service of one (1) copy of each upon opposing counsel is due to be filed on or before February 13, 1975;

Four (4) copies of the brief for appellees reproduced in compliance with Local Rule 11(d) with proof of service of one (1) copy upon opposing counsel is due to be filed on or before February 27, 1975, and

This case will be heard at the coming March, 1975 session.

By the court,
DANA H. GALLUP
Clerk
By (s) GRACE V. CAREY
Deputy Clerk.

[Cert. cc. Clerk, U.S.D.C., Mass.; cc: Messrs. Donahue and Stolzberg.]

United States Court of Appeals
For the First Circuit

No. 75-1033
ARTHUR FANO, et al.,
Plaintiffs, Appellees,
v.
LARRY MEACHUM, et al.,
Defendants, Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[387 F. Supp. 664]
(WALTER JAY SKINNER, *District Judge*)

Before COFFIN, *Chief Judge*,
MCENTEE and CAMPBELL, *Circuit Judges*.

Michael C. Donahue, Assistant Attorney General, with whom *Francis X. Bellotti*, Attorney General, and *John J. Irwin*, Assistant Attorney General, Chief, Criminal Division, were on brief, for appellants.

Richard Shapiro, with whom *Robert A. Stolzberg* was on brief, for appellees

June 27, 1975

COFFIN, *Chief Judge*. We turn once again to the task of evaluating inmates' due process claims in the wake of *Wolff* v. *McDonnell*, 418 U.S. 539 (1974). The district court provides us with a succinct summary of the facts, which the parties accept as accurate. 387 F. Supp. 664, 666-667 (D. Mass. 1975(. In the fall of 1974 there was a period of unrest at the Massachusetts Correctional Institution at Norfolk. There were

nine fires, thought to have been set, which were serious enough to require the presence of outside fire departments, and several other fires which were less serious. Plaintiffs were taken from the general population at Norfolk and placed in the Receiving Building at the Institution, which serves as an informal segregation unit. On October 25, 1974, each plaintiff was given a copy of a disciplinary report. The offenses charged against each plaintiff were described in substantially the same terms as appeared in the notices of reclassification hearings subsequently received. Since the alleged offenses were referred to the local district attorney for investigation and possible prosecution, the applicable regulation directed that no disciplinary hearings be held.[1]

On November 4 each plaintiff received a Notice of Classification Hearing. These notices reported that information received through reliable sources indicated that the plaintiffs were variously linked to the planning and execution of the fires, possession of contraband such as weapons, or trafficking in drugs. Classification hearings[2] were held, at which each plaintiff was represented by counsel. The evidence with respect to the alleged offenses, however, was given in closed session outside of the presence of plaintiffs and their counsel and was apparently, in each case, in the form of a recitation

[1]The regulation is based on the theory that to grant a hearing might create difficulties of either double jeopardy or denial of the privilege against self-incrimination. We do not share the view that prosecution may not constitutionally be based on conduct which is also the subject of disciplinary proceedings. *See, e.g., Palmigiano* v. *Baxter*, 510 F.2d 537 (1st Cir. 1974). Nor do we feel that this concern on the part of the Commonwealth, if well-founded, could immunize what would otherwise be a due process violation. *See Daigle* v. *Hall*, 387 F. Supp. 652, 660-62 (D. Mass. 1975); note 2 *infra*.

[2]We attach no significance for present purposes to the fact that these proceedings were for "classification" rather than "discipline". Defendants assert that "there are in the instant case as many administrative overtones as disciplinary ones", but we have already indicated that in our view the motive of prison officials, as such, is not properly a part of the due process calculus. *Gomes* v. *Travisono*, 510 F.2d 537, 541 (1st Cir. 1974). Whether the transfer is though of as punishment or as a way of preserving institutional order, the effects on the inmate are the same and the appropriateness of the action depends upon the accuracy of the official allegation of misconduct.